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Remedial Justice For Tamils

**Justice Delayed; Justice Denied
International Investigation Now**



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International Investigation Now**

Publication of



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PREFACE

Five years ago, the Sri Lankan government and the armed forces - comprised almost exclusively of Sinhalese speakers - committed international crimes on a massive scale against the Tamils in the Vanni region. The "unimaginable atrocities" were committed in the glare of satellite visuals available to all in international corridors of influence. Trophy videos of the carnage made by the guilty soldiers themselves have subsequently been leaked to the public domain, which has shocked the conscience of the mankind. Yet the Tamils have not received justice. On the contrary, the Sri Lankan government has accelerated the structural genocide of Tamils.

The member states of the UN Human Rights Council are still debating whether to employ a domestic mechanism or an international mechanism to mete out justice. While acknowledging the legal norm that prior to recourse to international remedy domestic recourse should be exhausted, we emphatically point out that when the recourse to domestic remedy is/will be futile there is no need for it. It has been well documented by scholars as well as experts appointed by the UN Secretary General that there is neither the political nor the judicial environment within the island of Sri Lanka to dispense justice for Tamils. In fact, the Tamils' resort to an armed campaign to realize their rights was due to the absence of a domestic forum to resolve their issue peacefully. After the war, the Transnational Government of Tamil Eelam [TGTE] was established solely because of the absence of political space to articulate the Tamils' political aspirations domestically.

World War I began 100 years ago. Failure to resolve conflicts between different nationalities was the primary spark that caused the outbreak of the war. However, in an international order which primarily pertains to the interests of the States, not much attention has been paid to the plight and suffering of the Peoples within the borders of these states.

In this connection, TGTE has established a center for the prosecution and prevention of genocide. The center is manned by scholars and activists. While the center's mandate is not limited to the genocide of the Tamils, its current focus is primarily on the genocide of Eelam Tamils. This booklet is a publication of the Center.

Peace and Stability can only be anchored on justice. As former UN Secretary General Kofi Annan eloquently put it, "Impunity anywhere is a threat to peace and security everywhere." We call upon the Human Rights Council in the interest of peace and stability in South Asia, and in the interest of humanity at large to start the process of dispensing remedial justice for Tamils by establishing a commission of international investigation to ascertain the truth of the credible evidence pertaining to war crimes, crimes against humanity and genocide in Sri Lanka.

Failure to act **NOW** will be a "stain on the collective conscience of moral peoples everywhere."

 Visuvanathan Rudrakumaran, Esq.

Prime Minister – TGTE

Transnational Government of Tamil Eelam (TGTE) is a new political concept, formed after the mass killing of Tamils in the final months of the war in 2009. It is a new political formation based on the principles of nationhood, homeland and self-determination. The raison d'être for the TGTE is the lack of political space inside the island of Sri Lanka for the Tamils to articulate and realize their political aspirations fully due to Constitutional impediments, a racist political environment and military strangulation; and the coordination of diaspora political activities based on democratic principles and the rule of law.

TGTE has held internationally supervised elections in 12 countries. These elections were held to ensure that the core belief of democracy be upheld within the TGTE and to demonstrate the TGTE's belief in and reliance upon democratic ideals. Although an elected body, the TGTE does not claim to be a government in exile. The Constitution of the TGTE mandates that it should realize its political objective only through peaceful means.

The TGTE promulgated a Freedom Charter on May 18, 2013 incorporating "Freedom Demands" of the Tamils across the globe.

Presently, in addition to the campaign for an international investigation, the TGTE is also campaigning for an International Protection Mechanism and the release of documents pertaining to Tamils prepared by the Office of the Special Advisor of the Secretary-General on the Prevention of Genocide.

SECTION 1

BRIEF DESCRIPTION OF EVENTS LEADING UP TO THE LAST STAGES OF THE MASSACRE OF TAMILS IN MULLIVAICAL

Successive Sinhalese governments embarked on serious discrimination and violence against the Tamils. The first act of an independent Parliament was to disenfranchise the Tamils in the hill country of Sri Lanka in 1948. In 1956, they made Sinhala the only official language of Sri Lanka, thereby denying jobs to Tamils in the public service – the major source of employment for Tamils. On education, Tamil students were required to get 20% higher grads (marks) than their Sinhalese counterparts to get admitted to Universities (reverse form of affirmative action). When Tamils peacefully protested, they were violently repressed. Major anti-Tamil pogroms took place in 1958, 1977 and 1983. Peaceful methods of pursuing their rights having failed and mainly after 1983 pogrom, Tamil youth took to arms. The struggle through arms for realizing the rights of the Tamils was ended in a battle in Mullivaikal in 2009. The Sinhalese army waged a war with scant regard to the norms of international humanitarian law, and according to UN's internal review report on Sri Lanka killed around 70,000 Tamils in six months in 2009. In addition, it is also alleged that the army used weapons prohibited by international law.

In September 2008, Sri Lankan military and security forces began a brutal campaign against Tamils. Sri Lankan forces under the command of high level officials conducted ground, aerial, and naval assaults against the predominantly civilian Tamil population.

Credible witness accounts and evidence demonstrate that the Sri Lankan Air Force committed numerous indiscriminate and disproportionate attacks consisting of artillery bombardment and aerial bombing. These included attacks on the government - proclaimed "safe zones" and on clearly marked hospitals, schools and food distribution centers.

As highlighted by the Sri Lankan governments order that humanitarian operations leave the Vanni in September 2008, the government significantly limited food and medicine distribution to hundreds of thousands of displaced Tamil civilians in the area, resulting in severe shortages resulting in malnutrition and starvation deaths. Humanitarian operations came under frequent fire from the Sri Lankan security forces, killing and wounding civilians, including many women and children, and destroying critical humanitarian supplies.

In the final months of the war, dozens of attacks on hospitals and makeshift medical centers were reported and documented.

SECTION 2

UN REPORTS

On June 22, 2010, the UN Secretary General appointed of a Panel of Experts on Accountability in Sri Lanka to advise him “regarding the modalities, applicable international standards, and comparative experience of international humanitarian and human rights law during the final stages of the armed conflict in Sri Lanka.” The Expert Panel issued their report on 31 March 2011, stating *inter alia*:

“Indeed, the conduct of the war represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace.

Specifically the Panel found credible allegations associated with the final stages of the war. Between September 2008 and 19 May 2009, the Sri Lanka Army advanced its military campaign into the Vanni using large-scale and widespread shelling, causing large numbers of civilian deaths...Around 330,000 civilians were trapped into an ever decreasing area, fleeing the shelling but kept hostage by the LTTE. The Government sought to intimidate and silence the media and the other critics of the war through a variety of threats and actions, including the use of white vans to abduct and to make people disappear.

The Government shelled on a large scale in three consecutive No Fire Zones,...It shelled the United Nations hub, food distribution lines and near the International Committee of the Red Cross (ICRC) ships that were coming to pick up the wounded and their relatives from the beaches. It shelled in spite of its knowledge of the impact, provided by its own intelligence systems and through notification by the United Nations, the ICRC and others. Most civilian casualties in the final phases of the war were caused by Government shelling.

The Government systematically shelled hospitals on the frontlines. All hospitals in the Vanni were hit by mortars and artillery,...The Government also systematically deprived people in the conflict zone of humanitarian aid,...purposefully underestimated the number of civilians who remained in the conflict zone. Tens of thousands lost their lives from January to May 2009, many of whom died anonymously in the carnage of the final few days.

The Government subjected victims and survivors of the conflict to further deprivation and suffering after they left the conflict zone. Screening for suspected LTTE took place without any transparency or external scrutiny. Some of those who were separated were summarily executed, and some of the women may have been raped. Others disappeared, as recounted by their wives and relatives during the LLRC hearings...Massive overcrowding led to terrible conditions,...and many lives were lost unnecessarily... persons in the camps were interrogated and subjected to torture.”



Furthermore, the Panel gathered additional evidence on the ongoing exclusionary policies against Tamils which enforce political, social and economic discrimination based on ethnicity.

Following the UN SG Panel Report, the Secretary General appointed the Honorable Charles Petrie, a diplomat originally from Britain who has served with the UN from Burma, Somalia, Congo, Gaza, etc., to examine the UN's role in the Sri Lankan conflict. The Internal Review Panel, in its November 2012 report, stated that, "according to the UN data most casualties are caused by government fire." It went on to state, "Some UN staff in Colombo expressed to the UN Country Team leadership that they are dismayed that the UN was placing primary emphasis on LTTE responsibility when the facts suggested otherwise." The Report further stated that, "We are appalled to see the Sri Lankan Government's obstruction and manipulation of the UN Personnel." The report also noted that the UN Secretary General's legal advisors said that he has authority under Article 99 of the UN Charter to appoint an International Commission of Inquiry on Sri Lanka.

The Review Panel Report states that:

"The Special Adviser on the Prevention of Genocide, who also has an international Human Rights and humanitarian law mandate, raised concern with the Government and the Secretary-General over the situation but favored quiet diplomacy and told the Government he would "not speak out." When his office later tried to issue a public statement this was not supported by UNHQ."

If that quiet diplomacy by Amb Deng did not save the lives of tens of thousands of Tamils during the last phase of the war in Sri Lanka, then it clearly is time for a public and robust diplomacy. We note the urgency and necessity that Ambassador Adama Dieng, who has replaced Ambassador Deng, makes a report on the genocide of Tamils in the island of Sri Lanka.

We call for investigation, which should not be limited to War Crimes and Crimes against Humanity but should also include Genocide.

SECTION 3

COMPARISON TO THE UN'S INVOLVEMENT IN THE CENTRAL AFRICAN REPUBLIC

As the UN Internal Review pointed out, in the Sri Lankan conflict, the UN Headquarters and the country staff, "was placing primary emphasis on LTTE responsibility when the facts suggested otherwise." and were subjected to the Sri Lankan Government's obstruction and manipulation.

In contrast, in the Central African Republic, the UN has taken a very proactive role in trying to prevent Genocide and Mass Atrocities. The Security Council seized the matter of the Central African Republic and passed three resolutions, S/RES/2134 (2014), S/RES/2127 (2013), and S/RES/2121 (2013). The UN Human Rights Council appointed an independent expert to monitor human rights violations, especially of children and women including all forms of sexual violence; and deployed human rights monitors in the country. The Secretary General has appointed an international commission of inquiry authorized by the Security Council in December 2013. On 22 January, 2014, the Security Council acted under Chapter VII of the UN Charter and called upon the member states to impose a travel ban and freeze assets of war criminals from the country.

SECTION 4

LLRC PROVIDES AN ESCAPE CHANNEL FROM THE SERIOUS CHARGES MENTIONED IN THE UNSG PANEL REPORT

On Feb 5, of this year, the Public Interest Advocacy Center, a non-profit legal advocacy group in Australia, released a report entitled “Island of Impunity?” dealing with the final days of the Sri Lankan civil war. This report, produced in consultation with prominent international jurists, went beyond other nonpartisan inquiries into the well-documented violence that punctuated the final days of the Vanni conflict. In addition to drawing on earlier documented reporting, the group’s inquiry took testimony from new witnesses and submitted its findings to forensic and legal analysis to discern a possible basis for criminal prosecution. William Schabas, a professor of international law at Middlesex University in London and an authority on war crimes, said that the report was the first to focus on issues that are relevant to a criminal prosecution. “What it demonstrates is there is clear evidence that a prosecutor can go on,” he said. Very significant among the new evidence uncovered is the systematic attempt by senior government and military officers to destroy the mass graves of Tamil civilians scattered throughout the Vanni.

In May 2010 the Sri Lankan President appointed the Lessons Learnt and Reconciliation Commission (LLRC) and mandated it to ‘investigate and report on the facts and circumstances that led to the failure of the ceasefire agreement between the Government and the Tamil Tigers, the lessons that should be learnt from those events and the institutional, administrative and legislative measures which need to be taken in order to prevent any recurrence of such concerns in the future, and to promote and further national unity and reconciliation among all communities.’ After 18 months of inquiry and deliberations, the Commission submitted its final report to the President on 15 November 2011 which then was made public on 16 December 2011. During that month there was much speculation in the local press that the Report was being rewritten in the Presidential Secretariat. Given that the Chairman of the LLRC himself, while he was the Attorney General of Sri Lanka, had done much the same editing of the reports of numerous other such presidential commissions, this would not have been surprising.

The irony here is that this period of LLRC activity (2010-2011) also happened to be a period when the Sri Lankan Army, of which the President is the commander-in-chief, was actively engaged in committing further war crimes, namely tampering with the mass graves in the Vanni, which became part of the abuses that the Public Interest Advocacy group dealt with. And this is precisely where their report entitled “Island of Impunity?” provides the certain but circumstantial evidence that the LLRC was probably not formed in good faith, rather as an exercise in evasion of Sri Lanka’s responsibilities put on only for the benefit of the international community. The

period of the LLRC’s activity also happened to be the time when the UNHRC had already taken up for consideration another report on the Sri Lankan civil war incidents; this one having been prepared painstakingly and meticulously by a special Panel of Experts assembled by the UNSG himself. The hurried production of the LLRC was meant to distract from the UNSG’ Panel of Experts’ Report so that that Report would not be acted on by the UNHRC, which feat it did succeed in pulling off, with certain countries deciding that ‘Sri Lanka needs more time.’



Wildly Varying Death Counts

Considering the poor track record of Sri Lankan Presidential Commissions appointed in the past to deal with minority grievances, it was no big surprise that the LLRC would turn out so weak. Whereas the UNSG Panel of Experts' Report concluded **40,000** Tamil civilians were killed under questionable circumstances, the LLRC said that no more than **8,000** deaths occurred and then proceeded to exonerate the Sri Lankan Army from any responsibility for what the Commission callously described as 'unfortunate fallout' from a war that was thrust upon the army and which the army could not avoid. A categorical statement was made that the security forces had not deliberately targeted civilians during the final stages of war, even though the Commission would itself admit in the same report that there was insufficient evidence and it had not done any analysis. We can draw from here only one of the two conclusions: Either the Commission was reckless and considered the Vanni civilians as suitable cannon fodder or the Report had, as suspected in the local media, gone through a careless editing process in the Presidential Secretariat. Whatever the conclusion, there was neither any retraction nor a regret expressed. Probably, the term "impunity" is admissible to explain the horrendous behavior of this Presidential Commission as well.

According to the UN Internal Review Report there were 'credible estimates' for civilian casualties of **70,000**. At the same time, a Sri Lankan Military Tribunal, this one supposedly a direct consequence and an offshoot of the LLRC report, examined military officers and put the civilian casualty due to Sri Lankan military action at **zero**, going so far as to contradict the LLRC Report.

The LLRC Commission also cast doubt upon the authenticity of Channel 4 videos which had already been authenticated by two UN appointed special rapporteurs Philip Alston and Christof Heyns, two renowned experts in the field. This is a theme that the Sri Lankan Government would reiterate again and again, sometimes using questionable means.

Rather perplexing of all the ponderings of the LLRC is the way it had handled two very important witnesses, one appearing on behalf of the victims and the other one for the Government: The LLRC had totally ignored the evidence given under oath by the Catholic Bishop of Mannar to the effect that of the 429,059 civilians who Government Agents counted in LTTE-controlled areas, a whopping **146,679** had not been accounted for, these numbers having been culled methodically and painstakingly over long hours by the Bishop and his assistants, from the official Governmental and UN-kept records.

The second instance the Commission failing to do the right thing was when the Secretary of Defense appearing before the Commission, on his behalf, on behalf of the Army, and the Government, claimed that neither the Government nor himself (in his capacity as Defence Secretary) had any faith or trust in the Tamils of North and went on to explain that this was the rationale behind the increased build-up of military compounds in the peninsula and elsewhere in North. Had the Commission taken his evidence given under oath at face value that is due to such a high ranking official, they would not have needed to look any further to find the root cause of the Mullivaikkaal massacre. They just had to report that having equated the ethnic Tamils of North with the LTTE, the Government itself had engineered the total disaster and therefore was totally responsible for entire debacle.

No Mandate For Accountability And Justice - LLRC

On May 26, 2009, the Government of Sri Lanka issued a joint statement with the United Nations Secretary General in which it undertook to set up a mechanism to look into accountability issues. But after a year of dragging its feet, when the Government appointed the LLRC, it was not to look into any accountability issue as such, but to find out why the Ceasefire Agreement of 2002 had failed. The Foreign Minister, Professor G.L. Peiris went around the world saying that the LLRC had the necessary mandate to look into issues of accountability. When the UNSG appointed a Panel of Experts to advise him on accountability issues in Sri Lanka, the Sri Lankan minister protested wildly and said the LLRC will do just that. Whenever or wherever, the question of accountability was raised by whomever, the government told them to wait for the LLRC Report. They protested at the Expert Panel's conclusion that there were credible allegations of war crimes and crimes against humanity committed by both sides at the last stages of the war, and publicly declared that neither the government nor its soldiers were culpable for any such thing; the only inquiry to substantiate such contentions had been done by the armed forces and the report is not public. At the end of it all, the LLRC confesses that it did not carry out a thorough investigation, but concludes nevertheless, that the government is not to be blamed. And to this date, the Government continues to refer to this appointment of the LLRC as a "genuine initiative" meant to solve all minority grievances. This type of deliberately arriving at contrived conclusions from the same basic facts is not new in the Sri Lankan context. All previous presidential commissions have followed this pattern. The true tragedy rests in the fact that the international community, despite certain knowledge of this abusive behavioral pattern on the part by an oppressive government, has for far too long been willing to understand and accommodate them.

Criticisms Of The LLRC

As a result of such tactics, the LLRC has been criticized by international human rights groups, the former members of the UN Panel of Experts and others. Its limited mandate, alleged connections to the Sri Lankan Military, its lack of independence and its failure to meet minimum international standards or offer protection to witnesses, these have all been taken due notice by these critics. They argued that the Commission was pointless in that it was primarily set up to examine the failure of the 2002 ceasefire and had no explicit mandate to examine to fix accountability for the alleged war crimes committed during the final months of the civil war. For its part, the Sri Lankan government rejected the UNSG Panel of Experts' report on the end of the war, calling it "fundamentally flawed" and "patently biased."



This attempt on the part of the Government would have been crystal clear as a stalling tactic to all who have had a chance to examine and see for themselves that the previous commissions of inquiry established by the Sri Lankan government had failed in the same manner to achieve anything other than delaying criminal investigations. All such inquiries had been plagued by government interference. The independence of the LLRC has been questioned due to the fact its members were appointed by the Sri Lankan government, one of the parties accused of committing international crimes. Most of its members were retired senior government employees. Some even held senior government positions during the final stages of the war when they publicly defended the conduct of the government and military against allegations of war crimes.

H. M. G. S. Palihakkara, who was Sri Lanka's Permanent Representative to the United Nations in Geneva, represented the government and defended the actions of the Sri Lankan military during the final months of the civil war. Rohan Perera was a legal advisor to the Foreign Ministry during the period investigated by the LLRC. The Chair, C. R. De Silva was Attorney-General from April 2007 to December 2008 and as such was the most senior law officer with responsibility for many of the issues brought before the LLRC. Silva has already been accused of interfering in a previous commission, the 2006-2009 Presidential Commission of Inquiry into allegations of serious human rights violations by the security forces. The International Independent Group of Eminent Persons, who had been invited by the President to oversee that Commission's work, resigned in April 2008 citing De Silva's behavior as one of major reasons for doing so. The BBC had been banned from covering the proceeding.

What follows underneath is a resume of international reaction upon the appointment of the LLRC or the release of its report: **Amnesty International** has condemned the LLRC as fundamentally flawed and unable to provide accountability for alleged atrocities. Amnesty claimed that the LLRC was a ploy by the Sri Lankan government to prevent an independent international investigation and that it would never deliver justice, truth and full reparations for the war victims. **Human Rights Watch** (HRW) claimed that the LLRC was an inadequate response to the many serious allegations of wartime abuses; explaining that it lacked independence and a proper mandate; its members were not impartial or competent; it failed to provide adequate and effective protection for witnesses; it did not have adequate resources; and that the government would not give serious consideration to the LLRC's recommendations. The **International Crisis Group** (ICG) claimed that the flawed LLRC would neither provide accountability nor reconciliation. As a consequence of the above concerns Amnesty, HRW and ICG announced in October 2010 that they had declined to appear before the "fundamentally flawed" Commission.

The Tamil National Alliance (TNA), the largest political party representing the Sri Lankan Tamils, criticized the report for categorically failing to "effectively and meaningfully deal with issues of accountability" and called its findings an offence against the dignity of the war victims. The TNA has called on the international community to establish a "mechanism for accountability" in order to bring to book the perpetrators of war crimes. The TNA leader R. Sampanthan expressed his disappointment in the report on the particular issue of accountability with regard to violation of international humanitarian laws and international human rights laws by the Sri Lankan state. He also said that the report had not done justice for the many thousands of victims of the war. According to M.A.Sumanthiran, the Deputy leader of TNA, the LLRC had contradicted itself by maintaining that it had no mandate to investigate into any incident and yet cleared the armed forces of deliberately targeting civilians. "How can the LLRC come to such a conclusion without investigating into the matter?," Sumanthiran queried. The TNA also issued a 115 page analytical response to the LLRC report in which it concluded that the LLRC had "failed to fulfill the expectations of the Tamil community" and that the LLRC did not address important questions of accountability; was designed to shield from blame civilian and military leaders responsible for serious crimes, and evinces the Sri Lankan State's unwillingness to acknowledge or address issues of accountability. The TNA report went on to urge the international community to acknowledge that the domestic accountability mechanisms had consistently failed and to take steps to establish an international mechanism for accountability.

The **Australian Foreign Minister**, Kevin Rudd issued a statement welcoming the report's recommendations but expressing concern that it failed to fully address alleged violations of international humanitarian and human rights law.

The **Foreign Minister of Canada**, John Baird expressed concern that the report does not fully address the grave accusations of serious human rights violations that occurred toward the end of the conflict. According to him, many of the allegations outlined by the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka have not been adequately addressed by this report.

The European Parliament passed a resolution in which it called for the establishment of a UN commission of inquiry into all crimes committed, as recommended by the UN Secretary General's Panel of Experts on Sri Lanka

UK Foreign Office Minister Alistair Burt of issued a statement to the House of Commons welcoming the publication of the report but expressing disappointment at the report's findings and recommendations on accountability. The statement went on to say, "Like many others, we feel that these leave many gaps and unanswered questions...we note that many credible allegations of violations of international humanitarian law and human rights law, including from the UN Panel of Experts report, are either not addressed or only partially answered."

Commenting on the report, deputy spokesperson of the **U S Department of State**, Victoria Nuland expressed concern that it does not fully address all the allegations of serious human rights violations that occurred in the final phase of the conflict.

At the 19th session of the UNHRC, the **UN High Commissioner for Human Rights Navi Pillay** believed that the report fell short of the comprehensive accountability process recommended by the Secretary-General's Panel of Experts.

Amnesty International noted that the LLRC report ignores the "serious evidence of war crimes, crimes against humanity and other violations of the laws of war by government forces."

Human Rights Watch has condemned the LLRC report for disregarding the worst abuses by government forces, rehashing long-standing recommendations and failing to advance accountability for victims of Sri Lanka's civil armed conflict. HRW has stated that the serious shortcomings of the report highlighted the need for an international investigative mechanism into the conflict as recommended by the United Nations Secretary-General's Panel of Experts.

The **International Crisis Group** noted that the LLRC report failed in a crucial task: Providing the thorough and independent investigation of alleged violations of international humanitarian and human rights law that the UN and other partners of Sri Lanka have been asking for. The ICG urged the international community to establish an independent international investigation in 2012.

In an opinion piece in the New York Times, the members of the **UN Secretary-General's Panel of Experts** on Accountability in Sri Lanka criticized the LLRC report for ignoring or playing down their Report's conclusions and for characterizing the civilian deaths as a consequence of the army's response to Tamil Tiger shelling or cross-fire. They also criticized the report's recommendations that the army and the attorney general carry out further investigation as these organizations had ignored governmental abuses for decades. Noting that the Sri Lankan government had failed to implement prior Commissions' recommendations and its unwillingness to take concrete steps, they concluded that the only way for the truth to be exposed is for the UNHRC to create an independent investigative body to determine the facts and identify those responsible.

SECTION 5

THE NATIONAL HUMAN RIGHTS ACTION PLAN (NHAP)

If one were to compare the Sri Lankan Government's efforts and its promises to the international community to a multi-stage rocket, the first stage booster called the LLRC has already come to the end of its usefulness. It will be jettisoned soon as stage two of that rocket called "The National Human Rights Action Plan" has now been ignited. It will carry on this dilly dallying for quite some more distance. It is increasingly becoming evident that the Sri Lankan Government is already readying a third stage booster somewhat hazily referred to as a "Truth and Reconciliation Commission." What is very much clear is that this endless travel in the vacuum shows no signs of abating.

As far back as 2008 even before Mullivaikkaal atrocities of 2009, when the UNHRC assembled for the periodic review of Sri Lanka, it did notice an abundance of human rights violations on the part of Sri Lanka in its dealings with minority communities and asked Sri Lanka to come up with a program to rectify the situation. A report was to be submitted in the next review scheduled for 2012. When the time came for the submission of the report, the Sri Lankan Government rehashed some of the recommendations found in the LLRC and called it the National Human Rights Action Plan.

The tragic-comic situation of this not-so-serious Plan was that Mr. Gothabhaya Rajapakshe, a brother of the President and the Secretary of Defense, was appointed as the "partner agency" responsible for executing over 85% of the activities of the Plan. In every one of these activities, such as human rights violations, land grab, language issues, devolution, resettlement, release from illegal detention, etc., the Rajapakshe brothers had been the main instigators and cause for concern to start with, and, therefore, the situation has worsened with no signs of abating. While he has steadfastly refused to acknowledge that there might be a problem or an issue that needs resolution, Gothabaya Rajapakshe's connections to the extremist anti-Tamil elements in Sri Lanka, such as the Bodhu Bala Sena and Jathika Hela Urumaya, make the whole exercise pointless even if he were to be so inclined.

The NHRAP details the action the government intends to take in eight major categories. These are:

- civil & political rights,
- economic, social, cultural rights,
- measures for prevention of torture,
- children's welfare,
- labour rights,
- migrant workers,
- women's rights,
- IDP welfare



Impressive as it may sound, the Action Plan does not recognize the existence of the core issue that caused the plan to be conceived in the first place, viz.: the numerical minority grievances. The social and ethnic diversity of the nation are completely disregarded. Every non-governmental organization and every human rights activist who has reviewed the report has declared its true intention to be stalling and diverting international attention.

The Action Plan does not address such sensitive areas as:

1. Making disappearances a criminal offence: To-date, sudden disappearances, white van abductions, unsolved murders and other forms of cruelties against dissenters, recalcitrant journalists and others seen as obstacles continue. And, in most cases, the incidents can be directly traced to the police, the armed forces, the political thugs allied to the ruling party and illegal armed gangs illicitly funded by the government. A justice system whose back has been broken is in no position to give any remedy.
2. Remedies for medical malpractice: In 2008 when the Action Plan was ordered, the main concern was the forced and illegal abortions inflicted upon the hill country Tamils who for most part were illiterate, “slave-like” workers of tea estates. The perceived threat was the proliferation of an ethnic population harmful to the Sinhala identity and racial hegemony. The consequence was violation of the bodies of “Estate Tamil women” and resultant deaths due to reckless handling of the abortions. Since the advent of this NHRAP, abortions, sterilization and forced birth control have been extended to the poor, widowed, orphaned illiterate girls and women of Vanni, particularly the Kilinochchi district.
3. Prison regulations to hold accused and convicted separately: There has been no shortage for reports of political detainees being tortured and humiliated and otherwise ill-treated ceaselessly by both the prison staff and the hardened criminals. It has been reported while the visitors to these detainees cannot see them, they can always hear their moans, cries and wails. According to the Human Rights Watch, Tamil detainees, both male and female, were subject to sexual violence.
4. Participatory Democracy: There is this talk in the report of ensuring regular consultation with civil society, vulnerable groups and stake holders. There have been plenty of incidents reported confidentially to outside parties about the military men threatening the prominent members of civil society with dire consequences if the military notices any visible signs of discontent or agitation among the general populace of Jaffna district. Journalistic dissent is practically nonexistent throughout the island. The Eastern Province is firmly under the grip of Gothabhaya’s henchmen.
According to M.A.Sumanthiran, the Deputy leader of TNA, the government's agenda is in fact to dilute the Participatory democracy, if there is any.
5. Religious Freedom: the number of mosques and Hindu temples demolished and prayers interrupted since the advent of this report, with the police standing by only because these were offensive to the sensibilities to the majority Sinhalese Buddhists will bear testament to the extent of religious tolerance in the era of NHRAP action Plan. No further elaboration would be needed.
6. Children’s Rights: The right of the Tamil children to continue their education in a fruitful manner has not been addressed. The Tamil schools demolished during the war have not been rebuilt. However, there is a proliferation of Sinhalese schools in most unneeded Tamil areas. There have been reports of Tamil children admitted to universities committing suicide for lack of means to continue their educations. The NHRAP offers no guarantees to the above.

7. Women's Rights: Women and children have undoubtedly suffered disproportionately as a result of the war. Distressingly high levels of militarization and the proliferation of Female-Headed Households have left women in an even more precarious position. Many of the women who have been compelled to become breadwinners are also taking care of their children, placing great strains on themselves causing major psychological and psychiatric problems. Also, reports of sexual violence and intimidation are commonplace. In other instances, women engage in sexual relationships with soldiers with the hope that they will be protected from other abuses. Civil society members point out that failing to succumb to a military man's request for sexual favors could result in continued visits and harassment.

Ananthi Sasiharan a member of the Northern Provincial Council observes thus:

Our homeland is completely occupied by the military, so much so that the military presence seems larger than the actual Tamil population. At any event, the army is there. People are scared by the army presence, they live in a state of fear, too afraid to talk or do anything. All our native lands are in their hands, they have seized everything.

In the Northeast, there are a huge number of relatives of missing people; not just of those that disappeared during the war, because even today people are disappearing. In the final stages of the war, there was a large-scale surrender, which the government completely denies any knowledge of. But the UN knew about this surrender, American officials knew and even the Indian government knew how many people surrendered – I don't know why they are all silent.

The issue of missing people, or people unaccounted for after the war, is a really pressing matter for us. On top of those that are missing, there are Tamil political prisoners that have been in captivity for many years and there have been no meaningful steps taken towards their release. Living [in the UK] you cannot imagine the state of jails in Sri Lanka – if there is something called hell, it is in the Sri Lankan state prisons. I can't even describe the state of them: people can only be seen through nets – a visitor cannot tell if the person inside is really her husband or child. It is so crowded and all you hear is tears and howling. Something must be done to reform these prisons.

So what happens when we have so many missing or imprisoned relatives? It means that today the military can carry out violence against Tamil women. You will have heard about the woman that was gang-raped in Poonagari. Hearing stories of abuse and sexual assault against our women and girls has become a daily occurrence here.

And then there are some women in Jaffna, who seem to have the support of the military and government officials. They bring young girls from war affected regions like Kilinochchi and Mullaitivu to Jaffna to run brothels. Even when they are reported by concerned citizens, the police do not take up the issue. This kind of support for such practices shows that these are intentional attacks against the fabric of our society and the spiritual morale of our nation.

8. Prevention of Torture: In the report, there is the talk of preventing through legislation, all forms of torture by law enforcement authorities. The primary tool of torture is Prevention of Terror Act, which is still in the book. On its face, it seems neutral but has a disproportionate affect on the Tamil population.

9. Resettlement and Land Issues: The politics of land remains controversial. Even though Menik Farm has closed long ago, there are reports of IDPs that have not been properly resettled. Since the military still occupies large swathes of land, many IDPs were forced to move in with friends or relatives. In other instances, families that have been “resettled” lack adequate housing, including locks for doors and windows or suitable sanitation facilities. And the government is blatantly engaged in land grabs and colonization.
10. Militarization and the Rule of Law: The government’s talk about a military drawdown lacks merit, especially in the Northern Province. There is a general sense among people that they are living under military occupation. Even though several checkpoints have been removed, a large number of them have been converted into shops – such as grocery stores and cafés – that are run by the military. The ubiquity of military personnel does not leave people feeling safer; ordinary citizens feel more vulnerable. The military’s foray into virtually all aspects of civilian life has had an overwhelmingly negative effect on the civilian population. In the North, military personnel even demand that they be invited to all social functions, including private events like weddings. Militarization has also resulted in the harsh repression of dissent. People are simply reluctant to speak out or to talk about political issues. They are afraid to have political ideas.
11. Sinhalization and the Denigration of Tamil Culture: Sinhalese people to settle in historically Tamil areas. In addition, dozens of towns and numerous streets that originally had Tamil names have been given Sinhalese ones. And, with government money, Buddhist temples and war memorials (venerating the military) continue to be built in the Northeast.

NHRAP has been subject to several detailed critiques. One of the criticisms is:

The drafters have fundamentally misinterpreted the UN’s conception of what an NHRAP is supposed to achieve when they state that, “While the fundamental purpose of an action plan is to improve the promotion and protection of human rights, it achieves this by placing human rights improvements in the context of public policy...” In fact, the opposite should be the case whereby the purpose of an NHRAP is to place all public policy making and implementation in the context of human rights. Effective realisation of human rights may only take place when every function of government is placed within a human rights framework in which human rights prevail over every other consideration. This is what is contemplated by the UN as well as in other examples such as South Africa’s Bill of Rights, the UK’s Human Rights Act, and the *acquis communautaire* of the EU. To state the reverse, that human rights may be overridden by other competing public policy considerations, is a misapprehension of purpose (based on an oversolicitous sense of what is practically achievable), and worse, it merely resonates what in any case happens in Sri Lanka. This presupposition of the report should in itself be sufficient basis to conclude that the putative NHRAP will be stillborn.¹

Consequently, international condemnation not only of the country’s human rights record but also of its attempt to parade this National Human Rights Action Plan as a panacea for all ills is not only justified; it is essential. Giving Sri Lanka a free pass on human rights and reconciliation would set a damaging precedent that could take decades to overcome. If the time for more resolute action has not yet arrived, will it ever?

¹ <http://groundviews.org/2009/03/08/the-farcical-national-action-plan-for-the-promotion-and-protection-of-human-rights-in-sri-lanka/>

SECTION 6

UNHRC RESOLUTIONS FOLLOWING MULLIVAICAL

Immediately after the end of the war, the U.N. Human Rights Council adopted Resolution A/HRC/S-11/L.1 in May 2009 to provide “Assistance to Sri Lanka in the promotion and protection of human rights.” The Resolution passed due to assurances provided by the government of Sri Lanka to the international community to promote reconciliation, resettlement of IDP’s, and implementation of the 13th Amendment of the constitution providing minimal devolution to the provinces in a timely fashion. The Resolution was viewed as a victory for the government, while concurrently there were allegations of war crimes -- including genocide -- committed. Gaining victory in an armed conflict through committing war crimes has never brought about true reconciliation, nor will the calls to address the war crimes disappear until the perpetrators are brought to justice in a credible manner. The Resolution was passed in the context of the International Community’s “War on Terrorism,” without actually looking into the facts and causes of the conflict.

In 2012, Resolution A/HRC/RES/19/2 was tabled by the U.S. and adopted by the UNHRC, applying very little pressure to the government of Sri Lanka when it was becoming increasingly clear that the government had no intention of investigating the allegations found in the UN Experts’ two reports. The lack of will was confirmed in early April of 2013 when Sri Lanka attempted to clean its hands of international crimes by creating a military “Court of Inquiry” as mentioned in the LLRC which ruled that there were “zero civilian casualties” and absolutely none of the Army officials were involved. This ruling does not match the findings of the U.N., governments, human rights organizations, and other NGOs, including the notable Channel 4 documentary “Sri Lanka’s Killing Fields,” which shows video evidence of war crimes by the Sri Lankan Army taken on soldiers’ cell phones.

In March 2013, Resolution A/HRC/22/L.1/Rev.1 was tabled by the U.S. and adopted by the UNHRC and built on the 2012 Resolution by encouraging the UN High Commissioner for Human Rights to continue her reports and visit Sri Lanka, and by strengthening the understanding that impunity for past crimes leads to the commission of further human rights abuses and other internationally recognized crimes that prevent a peaceful and prosperous future for the inhabitants of the island.



SECTION 7

HOW THE 2013 UNHRC RESOLUTION HAS BEEN FLOUTED

Northern Provincial Council Election

The 2013 HRC Resolution called for a Northern Provincial Council Election among others. Due to International Pressure, the elections were held. The Tamil National Alliance (TNA), whose leader, Mr. R Sampathan said in a BBC interview after 2009 that the 13th Amendment was a “dead corpse for many years now.” However, in order to win the support of the international community, the TNA participated in the elections. In its election Manifesto, the TNA stated *inter alia*:

- The Tamils are a distinct People and from time immemorial have inhabited this island together with the Sinhalese People and others
- The contiguous preponderantly Tamil Speaking Northern and Eastern provinces is the historical habitation of the Tamil Speaking Peoples
- The Tamil People are entitled to the right to self-determination
- Power sharing arrangements must be established in a unit of a merged Northern and Eastern Provinces based on a Federal structure, in a manner also acceptable to the Tamil Speaking Muslim people
- Devolution of power on the basis of shared sovereignty shall necessarily be over land, law and order, socio-economic development including health and education, resources and fiscal powers.
- There must be meaningful de-militarization resulting in the return to the pre-war situation as it existed in 1983 before the commencement of hostilities by the removal of armed forces, military apparatuses and High Security/Restricted Zones from the Northern and Eastern Provinces

Due to the 6th Amendment of the Sri Lankan Constitution, which criminalized even peaceful advocacy of an independent state, no political party in Sri Lanka is in a position to call for an independent state in their manifesto, as in 1977 when the Tamil United Liberation Front, the predecessor of the TNA, put such a call in their manifesto and requested a mandate from the voters. The TULF won all 14 MP positions in the North in that election. Following the TNA's electoral victory, as predicted by the TGTE and many other political observers, the GOSL has sought to cripple the Northern Provincial Council (NPC) completely. Also the controversy over the Governor, an ex-military officer and the Chief Secretary has brought the NPC's administrative machinery to a grinding halt.

The ethnic-wise representation in Parliament

Year	1947	1952	1956	1960	1965	1970	1977	1989	2002	2004	2010
Total seats	95 + 6	95 + 6	95 + 6	151;	151	151	168	225	225	225	225
Sinhalese	68	75	76	122	123	124	136	194	179	167	186
Tamils	20	12	18	18	18	18	19	19	27	33	23
Muslims	7	8	7	11	10	9	12	12	19	25	16

SECTION 8

HIGH COMMISSIONER NAVI PILLAY'S VISIT TO SRI LANKA

The United Nations High Commissioner for Human Rights Ms. Navaneetham Pillay visited Sri Lanka for a week in August 2013. This is the longest official visit she ever made to a single country. In an apparent snub to Ms. Pillay's visit, Sri Lankan President left for the Republic of Belarus, the day before she arrived to Sri Lanka. However, Ms. Pillay was able to raise some of her concerns with the Sri Lankan President after his return from Belarus, at the tail end of her trip

Ms. Pillay's visit was protested by numerous Sinhalese groups, including Buddhist monks who held demonstrations calling her a "Tamil Tigress in the UN." Ms. Pillay is of Indian Tamil heritage from South Africa. One of Sri Lanka's senior Members of the Cabinet, Public Relations Minister Mr. Mervyn Silva, even went to the extent of proposing marriage to Ms. Pillay.

Despite all these protests, Ms. Pillay visited Jaffna, Kilinochichi, Mullaitivu and Trincomalee. She met with the families of those killed, kidnapped, disappeared, tortured, women and displaced people. Several victims also held rallies to get her attention to their plight. Ms. Pillay was able to understand the situation in Tamil areas and said, "although fighting is over, suffering is not," and highlighted the agony of the families of the disappeared by saying, "As one wife of a missing man put it poignantly: "Even when we eat, we keep a portion to him."

.Ms. Pillai meeting a family member of the disappeared, August 2013

Ms. Pillay held a press Conference at the end of her trip and gave a brief oral report about her trip to the UN Human Rights Council in September. In these statements she addressed sexual abuses by the security forces, the military presence in the North, harassment and intimidation of those who met Ms. Pillay and said that she believes that the International community will have a duty to establish its own inquiry mechanisms, if Sri Lanka fails to prosecute individual perpetrators by March 2014.



At the end of her visit, Ms. Pillay held a press conference in Colombo. Some of the relevant highlights are as follows:

Protests Against Pillai's Visit: Some media, ministers, bloggers and various propagandists in Sri Lanka have, for several years now, on the basis of my Indian Tamil heritage, described me as a tool of the LTTE. They have claimed I was in their pay, the "Tamil Tigress in the UN." This is not only wildly incorrect, it is deeply offensive. This type of abuse has reached an extraordinary crescendo during this past week, with at least three Government Ministers joining in.

Extremely Moved: I have been extremely moved by the profound trauma I have seen among the relatives of the missing and the dead, and the war survivors, in all the places I have visited, as well as by their resilience. This was particularly evident among those scratching out a living among the ghosts of burned and shelled trees, ruined houses and other debris of the final battle of the war along the lagoon in Mullaitivu.

Massive Trauma: Because of the legacy of massive trauma, there is a desperate need for counseling and psychosocial support in the North, and I was surprised and disappointed to learn that the authorities have restricted NGO activity in this sector. I hope the Government can relax controls on this type of assistance.

White Van disappearances: I asked the Government for more information about the new Commission of Inquiry on Disappearances, and stressed the need for it to be more effective than the five previous commissions of this kind. I was disappointed to learn that it will only cover disappearances in the Northern and Eastern Provinces, which means that the many “white van” disappearances reported in Colombo and other parts of the country in recent years will not fall within its scope.

Witness and Victim Protection: I have also reminded the Government that Sri Lanka desperately needs strong witness and victim protection legislation, which has been languishing in draft form since 2007.

Military presence in the Northern Province: I was concerned to hear about the degree to which the military appears to be putting down roots and becoming involved in what should be civilian activities, for instance education, agriculture and even tourism. I also heard complaints about the acquisition of private land to build military camps and installations, including a holiday resort. This is only going to make the complex land issues with which the Government has been grappling even more complicated and difficult to resolve. Clearly, the army needs some camps, but the prevalence and level of involvement of soldiers in the community seem much greater than is needed for strictly military or reconstruction purposes four years after the end of the war.

Harassment and Intimidation of those who met Ms. Pillai: I would now like to turn to a disturbing aspect of the visit, namely the harassment and intimidation of a number of human rights defenders, at least two priests, journalists, and many ordinary citizens who met with me, or planned to meet with me.

I have received reports that people in villages and settlements in the Mullaitivu area were visited by police or military officers both before and after I arrived there. In Trincomalee, several people I met were subsequently questioned about the content of our conversation.

Authoritarian Direction: I am deeply concerned that Sri Lanka, despite the opportunity provided by the end of the war to construct a new vibrant, all-embracing state, is showing signs of heading in an increasingly authoritarian direction.

After Ms. Pillai’s visit to Sri Lanka:

After Ms. Pillai’s visit to Sri Lanka, she made a 27 point oral update to the UN Human Rights Council on September 25, 2013. She emphasized the main points she raised during her press conference in Colombo at the end of her visit, and some additional highlights including the following:

Sexual Abuse: She was particularly concerned to hear about the vulnerability of women and girls, especially in women -headed households, to sexual harassment and abuse, including at the hands of military personnel, and challenged the Government to formulate and rigorously enforce a zero tolerance policy for sexual abuse.

Compulsory Acquiring of Private Land by Military: The High Commissioner also received documentation on the compulsory acquisition of private land for installing military camps and other installations in Trincomalee, Mullaitivu, Jaffna and Kilinochchi.

Military Presence in the North: Four years after the end of the war, the military presence in the north remains considerable. The High Commissioner received information that a number of military checkpoints and barriers were removed just before her arrival and reinstated after her departure. There is a high level of surveillance of returnees, rehabilitees and detainees who have been released, including of the communities she met.

International Commission of Inquiry:

a) In Resolution A/HRC/22/I.I/Rev.I the UN Human Rights Council also calls upon the Government “to conduct an independent and credible investigation into allegations of violations of international human rights law and international humanitarian law, as applicable”.

b) Regrettably, the High Commissioner detected no new or comprehensive effort to independently or credibly investigate the allegations which have been of concern to the Human Rights Council. She received little new information about the Courts of Inquiry appointed by the army and navy to further investigate the allegations of civilian casualties and summary executions raised in the LLRC report and Channel Four documentaries, and urges these reports to be made public to allow them to be evaluated.

c) The High Commissioner stressed that appointing the armed forces to investigate itself does not inspire confidence in a country where so many past investigations and commissions of inquiry have foundered.

e) The High Commissioner encourages the Government to use the time now and March 2014 to show a credible national process with tangible results, including the successful prosecution of individual perpetrators, **in the absence of which she believes the international community will have a duty to establish its own inquiry mechanism.**

On February 24, 2014 the High Commissioner issued a report noting that “The Government of Sri Lanka Failed to ensure independent and credible investigations in the past violations of international human rights and humanitarian law” and “recommends the establishment of an independent international inquiry mechanism which would contribute to establishing the truth where domestic inquiry mechanisms have failed.”

Transnational Government of Tamil Eelam's (TGTE)'s activities and Ms. Pillay's visit:

Before Ms. Pillay visited Sri Lanka, Prime Minister of Transnational Government of Tamil Eelam Mr. Visuvanathan Rudrakumaran, wrote a letter to Ms. Pillay which was hand delivered to her office in Geneva. In that letter Mr. Rudrakumaran said "Your trip comes four years after the mass killing of Tamils by the Sri Lankan Government that left Tamil community extremely vulnerable to numerous abuses by the Sri Lankan Forces" and urged Ms. Pillay to address the following issues:

- 1) **MEET THOSE SURRENDERED TO SECURITY FORCES:** We urge you to meet those surrendered to Sri Lankan Security Forces in May 2009, like a group led by Rev. Father Francis Joseph and Ehilian. Several witnesses saw Fr. Joseph and others surrendering to the Sri Lankan Security Forces. For the last four years no one has been allowed to meet them. We urge you to use your stature as the UN Human Rights Chief to meet those who surrendered.

- 2) **STATION UN HUMAN RIGHTS MONITORS IN TAMIL AREAS:** Numerous human rights abuses, including abductions, disappearances, torture, executions and rape are continuing against Eelam Tamil civilians by the Sri Lankan Security Forces in the North East of the Island. It is believed that the ratio of Security Forces to civilians in Tamil areas is the highest in the world (about one soldier to every five civilians). One of the ways to protect Eelam Tamil civilians is to open UN Human Rights offices in the North-East of the island and to station UN human rights monitors there.
- 3) **PLIGHT OF 90,000 TAMIL WAR WIDOWS & THEIR DAUGHTERS:** We urge you to meet some of the 90,000 Eelam Tamil War Widows and their daughters to discuss their plight and to station UN women human rights monitors for their protection. Such consistent monitoring is the only way these vulnerable widows and their daughters can be protected from being abused by the Sri Lankan Security Forces. As the former US Secretary of State Hilary Clinton pointed out that Sri Lanka is one of the countries besides Bosnia, Burma and elsewhere, rape was used as a tactic of war. Thus we urge your office to formulate action plan to allow the Tamil women to live with security and dignity.
- 4) **SEND INTERNATIONAL TRIAL OBSERVERS:** We urge you to get the full accounting of those currently detained by the Sri Lankan Government and to ensure that these detainees have full access to their family members and Attorneys. Please get a commitment from the Sri Lankan Government that International trial observers will be allowed to observe the trials of these cases, if any are actually undertaken.
- 5) **CHECK FOR CHEMICAL WEAPONS USE & MASS GRAVES:** We urge you to visit the mass killing site “Mullivaikal”, the area where tens of thousands of Eelam Tamil civilians were killed in May 2009 by the Sri Lankan Security Forces. Please take technical experts to get samples of the soil and water in that area to check whether Chemical weapons were used in killing these civilians. Also, take experts to check for Mass graves in this area. There have been consistent reports from numerous individuals that Chemical weapons were used along with shelling, bombing and shooting and that thousands were buried in mass graves in the area.
- 6) **SECURE THE RELEASE OF TAMIL NADU (INDIA) FISHERMEN IMPRISONED IN SRI LANKA:** We urge you to secure the release of Tamil Nadu (India), fishermen imprisoned in Sri Lanka and to stop Sri Lankan Naval attacks and abuse on Tamil Nadu fishermen by the Sri Lankan Navy.

During Ms. Pillay's visit:

As soon as the TGTE was able to confirm that those who met Ms. Pillay were threatened and harassed, the TGTE immediately brought the issue to the attention of the UN and other countries and urged immediate action to protect those who met her.

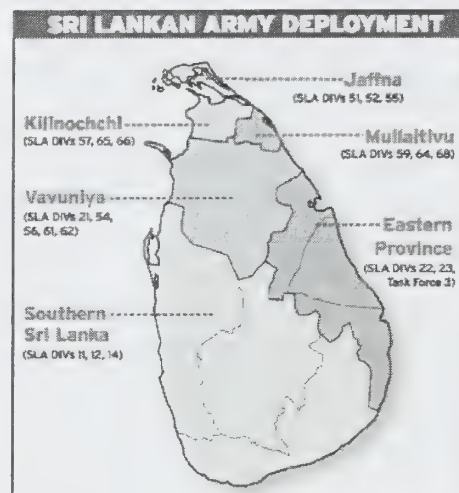
After Ms. Pillay's visit:

After Ms. Pillay's visit TGTE continued its campaign and said that UN Rights Chief's visit to Sri Lanka reinforces the need for an international investigation and the fact that abuses are continuing against Tamils by the Sinhalese Government necessitates an **International Protection Mechanism** to prevent impoverishment, marginalization and decimation of the Tamil population on the island.

SECTION 9

REQUEST FOR DEMILITARIZATION HAS BEEN IGNORED

According to credible sources, there are 136,000 armed forces in the Northern Province. The NPC's Chief Minister's request to reduce the number of armed forces has not been heard.



The Hindu, Chennai, India, 19 Sept. 2012

SECTION 10

ETHNIC BASED HUMAN RIGHTS VIOLATIONS (STRUCTURAL GENOCIDE) SINCE 2013 – TARGETTED ACTS BY THE GOSL DIRECTED AGAINST TAMILS

The Human Rights Violations by the GOSL are primarily based on Tamil Ethnicity. TGTE's previous publication was entitled 'International Investigation Now! Systematic Ethnic Based Human Rights Violations of Tamils Escalate.' Independent International Non-Government Organisations, including Amnesty International, Channel 4 News², and Human Rights Watch³ have also highlighted instances of Tamils being disappeared, often then killed, by Sri Lankan Security forces. In *SZITR v. Minister of Immigration and Multicultural Affairs*, [2006] FCA 1759, in the Australian Federal Court of Appeal determined "the Sri Lankan security forces, including the army, during the relevant period committed acts of torture against Tamil civilians of such number and routine frequency as to constitute widespread or systematic attacks against the Tamil population even if there was no formally stated army or defense ministry policy promulgated in this connection... seen many dead bodies of civilians and had seen soldiers shoot innocent civilians, which was to 'create fear and terror in the Tamil race'⁴." Since the end of the War, international human rights organisations, including Amnesty International⁵, International Crisis Group and the European Centre for Constitutional and Human Rights have reported on the fate of Tamil women who surrendered to Sri Lankan authorities; many of whom were forcibly interned and subjected to systematic rape and sexual abuse. In some instances, Tamil women are forced to marry Sinhala soldiers⁶.

² Manimekalai, L. 2013. *White Van Stories-reporting on Sri Lanka's disappeared*. Channel 4 News. Available at: <http://www.channel4.com/news/sri-lanka-white-vans-interview-leena-manimekalai-video> (Last Accessed: 10/02/14)

³ Human Rights Watch. 2008. *Sri Lanka: Recurring Nightmare State Responsibility for 'Disappearances' and Abductions in Sri Lanka*. New York, Human Rights Watch Vol. 20 N.2

⁴ *SZITR v Minister for Immigration and Multicultural Affairs*, [2006] FCA 1759, Australia: Federal Court, 15 December 2006, available at: <http://www.refworld.org/docid/4669121f1e.html> [accessed 10 February 2014]

⁵ Amnesty International. 2012. *Locked Away: Sri Lanka's Security Detainees* (London: Amnesty International)

⁶ Ellie. E. *The Smugglers' Prey*. The Global Mail. Available at: <http://sri-lanka.theglobalmail.org/smugglers-prey>

These instances of intentional abuse are compounded by more subtle examples, including the continuing exodus of Tamils from Sri Lanka. The number of Tamils leaving Sri Lanka has increased twenty-five fold since 2009⁷ and increasingly military personnel are identified as co-ordinators of the voyages⁸. This process reinforces the view that a none-written policy exists⁹ to undermine the Tamil population in Sri Lanka and cause the physical destruction of Tamils either in whole or in part in the Northeast. *Sri Lankan Pres. Jayawardene following anti-Tamil pogroms in 1983*



Rule of Law

The rule of the law is a fundamental aspect of governance in any democratic society.

Rule of law and the NorthEast

Successive Sri Lankan Governments have undermined the rights and freedoms of citizens who are members of numerical minority communities.

This most prominently occurs through the utilisation of the Prevention of Terrorism Act¹⁰. The Amnesty International report notes:

(T)he PTA also allows the authorities broad discretion to hold detainees where they choose and to move detainees from place to place while under investigation.⁵ Agents of Sri Lanka's security services routinely hold detainees in unofficial places of detention, including commandeered school buildings, private homes and factories. Secret detention is rife. This has fostered a culture where torture and other forms of ill-treatment are tolerated. ⁶ Law enforcement officers routinely ignore regulations and procedures meant to protect the rights of individuals who have been arrested. These include the requirement that the arrested person be informed of the reasons for their arrest, that they have the opportunity to communicate with family members or friends, and that a judicial hearing after arrest takes place within a 24 hour time limit. Access to legal counsel is inconsistently permitted by arresting authorities...¹¹ Moreover, whether through direct intimidation or an intimate knowledge of a culture of impunity lawyers advise clients to admit guilt as opposed to reaffirm their innocence¹².

[accessed 10 February 2014]

⁷ Ellis E. The Smugglers' Prey. The Global Mail. Available at: <http://sri-lanka.theglobalmail.org/smugglers-prey> [accessed 10 February 2014]

⁸ Ellie. E. The Smugglers' Prey. The Global Mail. Available at: <http://sri-lanka.theglobalmail.org/smugglers-prey> [accessed 10 February 2014]

⁹ *SZITR v Minister for Immigration and Multicultural Affairs*, [2006] FCA 1759, Australia: Federal Court, 15 December 2006, available at: <http://www.refworld.org/docid/4669121f1e.html> [accessed 10 February 2014]

¹⁰ Amnesty International. 2011. Sri Lanka: Briefing to the UN Committee against Torture 2011 (London: Amnesty International)

¹¹ Amnesty International. 2011. Sri Lanka: Briefing to the UN Committee against Torture 2011 (London: Amnesty International)

¹² Amnesty International. 2011. Sri Lanka: Briefing to the UN Committee against Torture 2011 (London: Amnesty International)

The lack of legal protections for suspects to argue and affirm their innocence have been confirmed by the International Organisation for Migration in 2009-2010, when the organisation reported concerns over human rights violations in the northeast and the lack of a legal framework within Sri Lanka to address conflict-related issues. In addition to the war related violations currently before the United Nations Human Rights Council, diaspora and Sri Lankan media continue to report violations of the rule of law, impunity for extrajudicial killings, disappearances and land seizure targeting the NorthEast as opposed to the South¹³.

SECTION 11 FORCED STERILIZATION

American NGO PEARL noted:

Human rights organizations in Tamil areas of Sri Lanka have reported recent and previous campaigns to prevent Tamil births through forced birth control, sterilization and abortions. Most recently, in August 2013, Sri Lankan government health workers coerced mothers into accepting surgically-implanted birth control in the Northern Province.

A Health Department report from the Northern Province found a 30-times higher rate of birth control implants of Tamil women in Mullaitivu, compared to the much more densely-populated Jaffna. The government's own report stated:

District	Total Population	Total Birth Control Implants	Birth Control/ Population Rate
Mullaitivu	124642	4694	3.80%
Kilinochi	129633	1029	0.80%
Jaffna	607158	760	0.13%

A

confidential cable from the United States Embassy in Colombo in May 2007 stated, "Father Bernard also told us of an EPDP medical doctor named Dr. Sinnathambi, who performs forced abortions, often under the guise of a regular check-up, on Tamil women suspected of being aligned with the LTTE."

According to the Home for Human Rights (HHR), an organization of lawyers devoted to protecting the fundamental rights of those living in Sri Lanka, more than eighty-percent of Tamil women in central Sri Lanka, were offered a lump sum payment of usually 500 rupees in return for their ability to reproduce. After receiving this payment, women underwent surgical sterilization. Though seemingly small, the sum is large for these predominately plantation workers. The population of this Tamil group has dropped annually since 1996 by five percent, whereas the population of the country overall has grown by fourteen percent...In contrast, police and army officers have been encouraged to have a third child through payment of 100,000 rupees from the government. The officers taking advantage of this offer are overwhelmingly Sinhalese. "This systematic pattern of authority-sanctioned coerced sterilizations may amount to an intentional destruction...of the Tamil estate population," HHR reported.¹⁴

¹³ Havilland, C. 2013. Tension over army 'seizure' of Sri Lanka Jaffna land. BBC NEWS/World/Asia. Available at: <http://www.bbc.co.uk/news/world-asia-22652210> (last accessed 10/02/14)

¹⁴ Pearlaction. 2013. Forced Birth Control & Sterilization of Tamil Women in Sri Lanka (Ohio: Pearlaction.org)

Credible evidence presented by different witnesses gives first person accounts of the administration of a government designed forced sterilization program. Under this program, hospital workers received instruction from higher authorities in Sri Lankan government that they have to reduce the Tamil population and to ensure that all females of reproductive age are on birth control. When questioned on this the military officials told witnesses that it is an “order” and to inject all women with large doses of progesterone. When asked how they can do this, the answer was to inform the women who are malnourished that they are being injected with vitamins to help them recover from malnutrition.

SECTION 12

GENOCIDE AND THE CONTINUATION OF STRUCTURAL GENOCIDE

The UN Secretary General’s Panel of Experts, in its report, stated several areas of potential serious violations committed by the Government of Sri Lanka, including:

- (i) killing of civilians through widespread shelling;
- (ii) shelling of hospitals and humanitarian objects;
- (iii) denial of humanitarian assistance;
- (iv) human rights violations suffered by victims and survivors of the conflict, including both IDPs and suspected LTTE cadre;

The above constitute actions directed by the Sinhalese Government and its Sinhalese army against the Tamil Civilians of Vanni.

According to the Permanent People's Tribunal findings in Bremen, Germany, “Sri Lanka is guilty of the crime of Genocide against Eelam Tamils and this crime is continuing.” (December 10, 2013)

Sociological and anthropological concepts have identified four components of genocide¹⁵. They are:

“Genocide Priming”

- Historical and political process of oppression and exclusion, construction

Demonization of other followed by pogroms over a long but sustained period of time

- Scholars such as Donald Horowitz of Duke University have pointed out that the Tamils in the island of Sri Lanka are marginalized in the political process. This is also corroborated in the UNSG Panel Report. The Panel noted the exclusion of Tamils based on ethnicity, perceived or real has been at the heart of the conflict.

“Genocidal Massacres”

There are 156 documented racial massacres of Tamils between 1956 and 2008¹⁶.

¹⁵ Rudramoorthy, Cheran. “Memorandum of Argument: Sociological and Anthropological Perspectives on Genocide of Tamils in Sri Lanka” Submitted to the “People's Tribunal on Sri Lanka”

¹⁶ Report of the Northeast Secretariat of Human Rights, “Least we Forget: Massacre of Tamils 1956-2001” August 14, 2007

Genocide by attrition

The Conditions during the war and the conditions after the war in the former conflict area intends to destroy the collectivity of the Tamil nation.

Rape and sexual violence

The International Criminal Tribunal for Rwanda (ICTR) was the first tribunal to conceptualize rape as genocide¹⁷.

As observed by Margaret Owen, director of Widows for Peace through Democracy, “Tamil women are victims of rape, rape in detention, sexual as well as economic exploitation on a massive scale”

Raphael Lemkin stated that genocide, in essence, is “the destruction of the national identity of the oppressed group [and] the imposition of the national identity of the oppressor”¹⁸ The Sri Lankan Government's policy of “One Country, One People” is nothing but a policy of Sinhala identity over other identities.

It is stated in some quarters that Genocide is difficult to prove. Our answer is two-fold. First, what the Tamils are asking for, at this stage, is an investigation of Genocide, not a prosecution of Genocide. The level of evidence sufficient to justify advocacy of investigation is far less than that needed to justify an advocacy of prosecution of the offense. Also the advocacy serves a public information purpose. Engaging in the advocacy sensitizes the public to what actually happened in the island of Sri Lanka, in a way that can be done only if one talks about genocide. Secondly, we acknowledge that specific intent should be proved. As Kofi Annan stated, “It is the element of intent to destroy a designated group, in whole or in part, which makes crimes of mass murder and crimes against humanity qualify as genocide. As the ICTR Trial Chamber noted, “intent is a mental factor which is difficult, even impossible, to determine”. However, the Court further stated, “The Genocidal intent inherent in a particular act maybe inferred....from the general context in which the act occurred”. As Ryan Park noted in an article entitled “Proving Genocidal Intent: International Precedent and ECC Case 002”¹⁹, “as of August 2010, every successful genocide prosecution in an international forum has relied on inferences of genocidal intent from the factual context in which the accused acted” Based on case law, he identified four factors that the courts looked to when engaging in contextual analysis:

1. Statements indicating genocidal intent
2. The scale of the atrocities committed
3. Systemic targeting of the protected group
4. Evidence suggesting that commission of the genocidal *actus reus* was consciously planned.

The reports produced by the Expert Panel, Charles Petrie, and other NGO reports we believe contain evidence to infer the specific intent. Only a formal investigation will establish the truth.

¹⁷ Magnarella, J Paul. “Recent Developments in the International Law of Genocide” in Alexander Laban Hinton ed. *Annihilating Difference, The Anthropology of Genocide* (Berkley: UCLA Press, 2002) pp 310-322

¹⁸ Lemkin Raphael. “Axis Rule in Occupied Europe”, Carnegie Endowment for International Peace, Washington DC, 1944, p 79

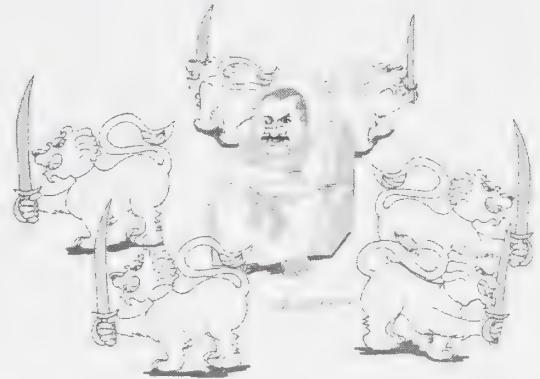
¹⁹ Park Ryan. “Proving Genocidal Intent: International Precedent and ECC Case 002” *Rutger Law Review* Vol 63:1

SECTION 13

TARGETING OF MUSLIMS AND CHRISTIANS

The Sri Lankan State that had been targeting the Tamil people for many decades has now turned its efforts against the Muslims. Initially the food and dress habits of the Muslims were targeted, and then their places worship, with mobs attacking mosques and destroying some of them, and denying Muslims' freedom of worship. The Sri Lankan Government is making use of all means, both "legal" and "illegal," available to them.

In the village of Weliweriya, situated not very far away from the Sri Lankan capital, Colombo, the Sinhala Catholic people were also targeted in August 2013. Sinhala chauvinism has risen to such heights, and is so narrow-minded that it is ready to target anyone on its way -- even Sinhalese if they practice Christianity. This demonstrates the manifestation of Sinhala extremism that is not willing and ready to accommodate any other cultures, faiths or groups to live peacefully, co-existing side by side, with a sense of accommodation and tolerance, granting every distinct group its cultural, religious or national rights.



SECTION 14

REJECTION OF UPR RECOMMENDATIONS – HIGHEST REJECTION IN THE HISTORY OF UPR

The first submission of Sri Lanka at the UPR was made in 2008. Subsequently after four years Sri Lanka's turn came for reviewing its glorious human rights record in November 2012. India, Benin and Spain reviewed the performance of Sri Lanka over the past four years²⁰.

During its first review in 2008 Sri Lanka in all received 95 recommendations from 39 countries. In all it accepted 52 recommendations to be implemented over a period of 4 years and rejected 25 with no clear position on 8.



The very next year Sri Lanka set out on a path to destroy the Tamils, its successful campaign ending with the Mullivaikal carnage of innocent Tamil civilians in May 2009. The then mute International community has woken up to see the cruel treatment of the Tamils in the 'war without witness' with a series of exposes in the International media.

²⁰ <https://www.colombotelegraph.com/index.php/more-countries-are-now-breathing-down-sri-lankas-neck-and-it-is-a-good-sign/>

This awareness is reflected in the participation of 99 countries in the UPR of Sri Lanka in November 2012. 29 NGOs and INGOs made their submissions, along with 17 joint submissions by individuals.

An overwhelming 210 concrete recommendations were made by these 99 countries. Sri Lanka accepted 110 of those recommendations and rejected an overwhelming 100 recommendations, nearly half the recommendations made.

This is the highest rejection by a member state in the history of the UPR. In all, Sri Lanka rejected the recommendations of 45 countries. Some of the most concrete suggestions which would have gone a long way in Sri Lanka mending fences with the Tamils, Muslims and the International community that were rejected were :

- Accede to the Rome Statute of the International Criminal Court (ICC) and draft a law on cooperation between the State and the Court
- Accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Sign the International Convention for the Protection of All Persons from Enforced Disappearance
- Fully incorporate the Convention on the Elimination of Discrimination against Women into its domestic system
- Adopt the draft bill on witness and victim protection
- Adopt legislation on appointments that would ensure the independence of the Human Rights Commission
- USA sought removal of the military from civilian functions, creation of mechanisms to address cases of the missing and detained, issuance of death certificates, land reform; devolution of power; and disarming paramilitaries
- Expedite implementation of reconciliation measures in the North. This would include removing oversight of humanitarian and NGO activities from the purview of the Ministry of Defense to a civilian body, reducing the intrusiveness of military presence on civilian life in the North and setting a specific date for free and fair Northern Provincial Council elections
- Adopt a national policy to provide human rights defenders with protection and ensure investigation and punishment of threats or attacks against them
- Fully cooperate with United Nations Human Rights mechanisms Create a reliable investigation commission consisting of professional and independent investigators to identify, arrest and prosecute the perpetrators of the Muttur murders
- Publish the names and places of detention of all the imprisoned persons
- Take action to reduce and eliminate all cases of abuse, torture or mistreatment by police and security forces
- End impunity for human rights violations and fulfill legal obligations regarding accountability

- Strengthen judicial independence by ending government interference with the judicial process, protecting members of the judiciary from attacks and restoring a fair, independent and transparent mechanism
- Grant due process rights to all detainees held in both military and police facilities, including those held in administrative detention; disclose all unofficial detention sites; and facilitate effective and independent monitoring of detainees
- Allow the International Committee of the Red Cross unrestrictive access to detention centers.
- Undertake measures that would allow citizens to have access to public information, in particular on alleged violations of human rights
- Ensure that all human rights defenders, including individuals cooperating with UN HR mechanisms, are protected effectively from unjustified criminalization, harassment or intimidation and can perform freely their legitimate duties.

Sri Lanka is a tiny island, why should more than half the member nations of the UN make these recommendations? The participation of so many countries clearly shows that Sri Lanka is on the wrong path. The UPR process is to help countries to correct their past mistakes and morally accept responsibilities. It is also to usher in a new beginning through a democratic process and plan a better future.

Sri Lanka by rejecting these concrete suggestions once again proved that it is not ready to listen to the same advice given by other UN member nations.

SECTION 15

INABILITY AND/OR UNWILLINGNESS OF THE SRI LANKAN GOVERNMENT TO DISPENSE JUSTICE DOMESTICALLY

Historical Evidence

As clearly illustrated in the TGTE's previous publication, "We Accuse War Crime, We Accuse Genocide,"²¹ the outcome of these commissions was either absence of findings or complete disregard of their recommendations.

In December 2013, the Center for Policy Alternatives, a Colombo based think tank, published a report listing commissions of inquiry and committees appointed by the GOSL from 2006 to November 2013,²² which chronicled 17 commissions and committees during the period.



²¹ <http://www.scribd.com/doc/83708847/We-Accuse-War-Crimes-and-Genocide-Publish-by-Transnational-Government-of-Tamil-Eelam>

²² <http://www.cpalanka.org/a-list-of-commissions-and-committees-appointed-by-gosl-2006-2013/>

The results of all either have not been made public or lack of public knowledge on whether the committees continue to function or whether the committee submitted any reports or absence of public reports or absence of implementation of recommendations. In sum, the history of domestic commissions of inquiry is an abject failure; an attempt to dupe the international community and an insult to the intelligence of an ordinary man.

Special attention should be made about the International independent group of Eminent Persons (IIGEP). 11 international actors observing the work of commissions of inquiry to investigate and inquire into alleged serious violations of human rights) in the mid-2000s. In its final report, the IIGEP stated that it found an “absence of political will and the institutional inability of Sri Lanka to conduct human rights inquiries in accordance with international norms and standards.”

Lack of Political and Judicial Environment for Tamils to pursue justice in Sri Lanka

The UN SG Panel of Experts stated in their report, that “...it has little confidence that [LLRC] will serve justice in the present political environment” Along this line, the UN Internal Review Report stated there is “No enabling environment for domestic dispensing of justice”.

Professor Steven Ratner, University of Michigan, a member of the UNSG Panel stated in the American Journal of International Law (106,795, 2012) that there is, “... no environment to address accountability and dispense justice for these crimes domestically in Sri Lanka.”

“Nearly four years after the war, the Sri Lankan accountability process has finally been set in motion, but in a sense it has barely begun. The majority within the Human Rights Council that the United States cobbled together for the March 2012 resolution may dissipate over time. In the end, states may emphasize other important aspects of national reconciliation within Sri Lanka and may no longer push the question of accountability. It may well be that a full and fair examination by the Sri Lankan Government of the State's own conduct and that of its adversary will need to await electoral developments some years down the road” (Accountability and the Sri Lankan Civil War by Steven R. Ratner, *The American Journal of International Law*, Vol. 106.795, 2012)

As stated above, the political and judicial environment within Sri Lanka is hardly conducive for Tamils to pursue justice through a domestic process. This is clearly illustrated through the events of 2013.

- a) **Legal:** The entire judicial system has been compromised in recent times, especially after the 18th Amendment to the Constitution which was passed in 2010. Unlike the earlier 17th Amendment which democratized the appointment of public officials through providing for their appointment through a Constitutional Council which consisted of members appointed by the different political parties including a representative of the minorities, the 18th Amendment decreed that the President would make all such appointments, a Parliamentary Committee would advise him but he was not bound to listen to their advice. This made it possible for those who vied for such public office to adhere to the President's whims and fancies. An example of this is the continued appointment of officers from the Attorney General's Department to the Supreme Court while senior judges of the Court of Appeal have to patiently wait in hope or cozy themselves with the President by delivering pro-Government rulings.

The ‘illegal’ impeachment of the Chief Justice Shirani Bandaranayake last year and replacing her with Mohan Pieris is an example of this trend of decay in the judiciary. Mohan Pieris is widely known in the International Community for having been the former Attorney General and Presidential Advisor who spoke on behalf of the Government at Geneva in the Human Rights Council sessions defending the State. It is no surprise that he was rewarded with this plum posting. Mohan Pieris also has the reputation of making a fraudulent statement re the journalist Prageeth Ekneliyagoda who was ‘disappeared’ in January 2010. Speculation is rife that his disappearance is connected to his investigation of the use of chemical weapons during the last phase of the war. Mohan Pieris at that time made the accusation that Prageeth was living abroad in luxury and had not been ‘disappeared’. On being questioned in court regarding the statement he admitted that the statement was hearsay.²³ It is such a man who now heads the Sri Lankan judiciary.

Map 2 Key Tamil diaspora communities in the world



The use of the Prevention of Terrorism Act (PTA) does not allow any discretion to judges even if they want to be independent;

Intimidation of judges and magistrates is routine.

- b) **Political:** Some political, military and administrative actors are implicated in acts of genocide, war crimes and crimes against humanity. As such, it is unlikely they will incriminate themselves.
- c) **Ideological:** GoSL is using Sinhala-Buddhist triumphalism that demonizes the Tamils (despite the military defeat of the LTTE) to remain in power. Any sharing of power with the Tamils will be seen by Sinhala-Buddhists as a diminution of their authority and power. Therefore, to prevent alienating its electoral base, the government leadership will not permit Tamils to pursue justice to be equal citizens with the Sinhalese.
- d) **Continuing exodus of Tamils from Sri Lanka:** The Tamil Diaspora have fled Sri Lanka since the late seventies and settled in Europe, North America, Australia, New Zealand, etc., leaving behind close friends and family. Many who remained in Sri Lanka are currently facing the daily brutality of the Sri Lankan state. Since the end of Sri Lanka’s civil war, there has been a **mass exodus of Tamil refugees globally**. They have landed on the shores of India, Indonesia, Thailand, Malaysia, Australia, Europe, North America, South America, the West African country of Togo and Mali, etc.

In India alone, around 110,000 Sri Lankan Tamils refugees are living in 112 camps and a further 32,000 persons are residing outside camps in the southern state of Tamil Nadu, India.

²³ <http://blog.srilankacampaign.org/2012/06/former-attorney-general-testifies-in.html>

In Malaysia there is a large number of Tamil war widows left with children. Currently, these children are barred from attending schools.

- e) **Demonization of Tamil Diaspora:** Due to lack of political space inside island, specifically due to the 6th Amendment to the constitution and military intimidation, the diaspora plays an important role in articulating the Tamil situation. The TGTE was established as a result of the above. Both the Tamils inside the island of Sri Lanka and outside are two sides of the same coin of the Tamil nation. Since the Tamil diaspora live in open political space, they are in a position to articulate the Tamil political aspirations fully. This luxury is denied for the Tamils inside the island of Sri Lanka. Rather than addressing the issues, raised by the Tamil diaspora, the GOSL demonized them as “terrorists”
- f) **Military Tribunals:** Military tribunals will not work when the Heads of the Political/Military stand accused of International Crimes.

SECTION 16

TRUTH AND RECONCILIATION COMMISSION IS NOT A SUBSTITUTE FOR AN INTERNATIONAL INVESTIGATION

According to Amnesty International, a minimum of 32 Truth and Reconciliation Commissions (TRC) have been established from 1974-2008 in over 28 countries.

A TRC versus a tribunal in the context of bringing reconciliation is a debatable topic in various countries but this is not the case in Sri Lanka. The South African TRC model has been mentioned the most in relation to suggestions of Sri Lanka implementing a TRC, but there are obvious differences between the two, although “crimes against humanity” have been documented in both. This is due to the history and nature of the conflict in the two nations.

The first and foremost point to note is that one of the objectives of a TRC is to admit to all wrongdoings by the perpetrators, which the South African model had success with. However, the government of Sri Lanka maintains to this day that there were “zero civilian casualties” and has already implemented its domestic justice mechanisms as required by the LLRC in the form of a special Court of Inquiry which cleared the entire Army while reinforcing there were no civilian deaths due to military action. The objective by the government of Sri Lanka is clear; buy time until a TRC is accepted while continuing the genocide in other forms such as coercive population control among other human rights violations. The question to ask would be, “Under what basis would a TRC be credible today or in the future,” and also, “How would another resolution at the UNHRC calling upon Sri Lanka hold perpetrators accountable when the government has already done its best and the results contradict international reports and are a clear whitewash of genocide.”

Referencing the previous “Presidential Truth Commission on Ethnic Violence” in Sri Lanka of 2002, established for the pogrom against Tamils which took place between 1981-1984 we find this to be true.



The preface of *A Legacy to Remember: Sri Lanka's Commissions of Inquiry* published by The Law and Society Trust in 2010 states:

“Sri Lanka has constituted Commissions of Inquiries during past decades as instruments to investigate and prevent human rights abuses. However, whether these Commissions of Inquiry established by successive political regimes ever visualized justice, truth, and reconciliation for victims as core objectives of their work, is a pertinent question. The failure to investigate un-inquired cases, the lack of public faith in the commission proceedings, the reluctance of victims to look at the law and Commission processes for relief all points to the fact that Commissions of Inquiry in Sri Lanka have been more political exercises than genuine attempts to reconcile a traumatized nation.”

These viewpoints are further reinforced by the Asian Human Rights Commission papers AHRC-STM-075-2010, AHRC-STM-072-2010, AHRC-STM-071-2010 which note;

“There is overwhelming agreement that all the commissions appointed in Sri Lanka to date have failed to address the serious questions affecting Sri Lanka from recent past conflicts. These commissions have been condemned by international organizations such as Amnesty International, as well as by local human rights groups who have published extensive reports and analysis on the commissions’ workings. From the mandate, the selection of the commissioners and the work they have carried out, it is not difficult to grasp that these commissions were not meant to engage in any genuine truth seeking, or to address concerned problems of law and morality. They also did not deal with ways to avoid the recurrence of similar incidents in the future. In fact, all such commissions have been exercises of denial. At the times people were expressing concerns about problems resulting from these conflicts, such as forced disappearances, extrajudicial killings, torture, abuse of power, illegal arrest and detention, these commissions created confusion and doubts about the good faith of the government. Thereby, they diminished the possibility of resolving the hopeless conditions prevalent in the country. This country has no tradition in truth telling and reconciliation after periods of crises.” (<http://www.humanrights.asia/resources/journals-magazines/eia/eiav4n3/possibilities-for-sri-lanka2019s-truth-and-reconciliation-commission>)

It should also be noted that a TRC is contradictive of the government of Sri Lanka’s stand itself as it believes that it fought a justified war against terrorism where no wrongs were committed. A TRC would damage that image.

The Transnational Government of Tamil Eelam’s (TGTE) 2nd Parliament unanimously adopted a Resolution Rejecting the Truth and Reconciliation Commission for Sri Lanka. It was pointed out in the Resolution that The Truth and Reconciliation Commission (TRC) set up by President Nelson Mandela in South Africa under the chairmanship of Archbishop Desmond Tutu was a mechanism to achieve a peaceful transition towards a race neutral democracy, not as an escape mechanism from accountability in a racially abusive country like Sri Lanka. It was also pointed out that as US President Obama mentioned in his eulogy for late Mandela, “Reconciliation is not a matter of ignoring a cruel past.”

It is also pointed out in South Africa, the TRC was established after the formal transfer of power from the oppressor to the oppressed.

SECTION 17

NEED FOR AN INTERNATIONAL INVESTIGATION

Tolerating impunity will not only damage the victims of abuse, but it will set an unacceptable precedent for other countries emulating the “Sri Lankan Solution” in addressing their national conflicts. As Kofi Anman, former UN Secretary General, observed, “Impunity anywhere is a threat to peace and security everywhere.” Support for an impartial and thorough inquiry will not only help to end impunity, but also to restore both due process as well as international law. If international law is seen to work only when “the political will” is available, then the moral character of much of that law will be considerably weakened. The countries of the United Nations have acted in Syria and the Central African Republic cases, even if the outcome is not perfect. Consistency and the very integrity of the UN itself demand that it is time for the UN to act meaningfully in the Sri Lankan context. Accountability is a prerequisite for a friendship between the Sinhala nation and the Tamil nation.

After the horrors of the Second World War, nations around the globe, resounding said, “Never Again.” It remains now in the hands of the UNHRC to show the world that those were not hollow words and humanity will indeed not tolerate any attempts to exterminate a people, in its entirety or in part from the face of the earth under any pretext by anyone ever again.

SECTION 18

CALLS FOR AN INTERNATIONAL INVESTIGATION SINCE THE LAST HRC RESOLUTION

The Northern Provincial Council (NPC) in January 2014 unanimously adopted a resolution calling for the United Nations to establish an International War Crimes Investigation to investigate Sri Lankan leaders for committing War Crimes and crimes equivalent to Genocide, against Tamil people in that island. The call for international investigation is to examine killings that took place in the final months of the war between the Sri Lankan Government and Tamil rebels called the Tamil Tigers.

This is the first time Tamils within Sri Lanka through their elected representatives have called for such an investigation.

SECTION 19

CALLS BY INDIA

Resolution passed by Tamil Nadu State Legislature²⁴

The democratically elected members of the Tamil Nadu State Assembly adopted a resolution on behalf of the 75 million Tamils in Tamil Nadu, India unanimously and strongly requests the Indian Government that,

- 1)....The Indian Government refrains from referring to Sri Lanka as a 'friendly country' from here on....

- 2) An independent and international investigation into the Genocide and War Crimes perpetrated by Sri Lanka during the civil war comes into place.
- 3) Based on the International Investigation all perpetrators of these crimes should be brought before an International Court of Justice and punished.
- 4) Economic sanctions against Sri Lanka are imposed until it puts an end to the atrocities being committed against Tamils.
- 5) It takes necessary steps to bring a resolution at the UN Security Council which, in due recognition of the future of Tamils of Tamil Eelam, leads to a referendum with regard to these matters being conducted among the Tamils living in Sri Lanka, and all Tamil Diaspora displaced from Sri Lanka who are living in various parts of the world.

Tamil Nadu Student Movement

On the 8th of March 2013, 6 students (later two more joined) from the Loyola College Chennai fasted in condemnation of atrocities committed on Tamils in Sri Lanka. They were demanding that India vote for the US-sponsored Resolution at the 22nd UNHRC in Geneva. They also wanted a referendum and an Independent International Inquiry into alleged war crimes, crimes against humanity and Genocide.

A large number of students joined the protests despite the government directing closure of educational institutions. Protests ranged from fasts to agitation to boycott of classes in various parts of the state including Coimbatore, Salem and Tirunelveli, with students pressing for various demands, including an independent probe against Colombo for alleged human rights violations and moving the International Court of Justice.²⁵

This student movement was not restricted to Tamil Nadu alone; students in Bangalore, Hyderabad, Mumbai, New Delhi and Kolkata also protested. The highlight of these protests was the presence of students from the elite professional institutions like the Indian Institute of Technology (IIT) and the Jawaharlal Nehru University, New Delhi.



²⁵ Tamil Nadu: Protests continue over Sri Lankan issue, 500 students arrested, The Times of India, Chennai Mar 18, 2013

A section of students from IIT Bombay observed a hunger strike through one day in condemnation of war crimes committed by Sri Lanka and genocide of Tamils²⁶. On the 24th of March students from IIT Bombay, IIT Kharagpur, IIT Kanpur AND IIT Madras organized a human chain formation.

The event was organized to create awareness and sensitize society regarding the human rights violations and genocide in Sri Lanka as a part of a coordinated protest with other IITs (each at their respective institutions). demanding that the following actions be taken up:

- An independent inquiry into the alleged human rights violations that occurred during the final phase of the civil war in Sri Lanka.
- An early political settlement for the Tamils in Sri Lanka through holding a referendum²⁷.



The student movement in support of the Tamils in Sri Lanka forced the entire government machinery to come to a standstill. All that the students demanded was justice for the Tamils in Sri Lanka.

Indian Civil Society

It was not just the students who came to the streets. Software engineers at Tidel park left their work to show solidarity with the students, lawyers, the auto drivers unions and lorry drivers unions called for a strike, Tamil Nadu Film Directors Association and the Tamil Nadu Film Producers Council, and Koyambedu wholesale market traders selling fruits and vegetables shut down their business²⁸.

The National Alliance of People's Movements comprising of more than 225 civil society and human rights groups across India took up a Country wide awareness campaign on the atrocities caused against the Tamils. They demanded the boycott of India at the CHOGM 2013 and that India take up the issue of the Genocide of the Tamils in Sri Lanka, the leading campaigners of NAPM included Medha Patkar and Gabriel Dietrich²⁹.

²⁶ <http://iitbombay.org/news/Current/iit-bombay-joins-anti-sri-lanka-protests-after-iit>

²⁷ All India IIT students protest against Genocide,

http://www.lankanewspapers.com/news/2013/3/81973_space.html

²⁸ <https://www.colombotelegraph.com/index.php/students-movement-in-tn-not-a-movement-of-riffraffs-or-fringe-groups-a-reply-to-kusal/>

²⁹ <http://napm-india.org/content/napm-urges-pm-not-attend-chogm-sri-lanka>

Arundhati Roy termed the war on Eezham Tamils in the island of Sri Lanka as genocide that was allowed to happen by the world. "The most horrific things I have seen and testimonies I have read are from Sri Lanka" she said and expressed her angst over how the Sri Lankan state forces targeted hospitals, and bombed people after forcing them to move into a No Fire Zone. "The world allowed this to happen, and it will continue to allow this to happen" she said.³⁰

Justice Rajinder Sachar, in an article written in Counter Currents wrote, "The government has established the Lessons Learnt and Reconciliation Commission as the cornerstone of its policy to address the past, from the ceasefire agreement in 2002 to the end of the conflict in May 2009, but it has failed to satisfy key international standards of independence and impartiality".³¹

In Bangalore, human rights organizations including the Karnataka students' organization, All India Progressive Women's Association and National Coalition of Human Rights Organizations have set up a Forum against War Crimes and Genocide after the experiences of the Tamils in Sri Lanka. Speaking on the occasion Dr. G. Ramakrishna, a prominent left wing intellectual, writer and political activist called for the prosecution of the perpetrators of the horrendous war crimes committed during the war. Prof. Nagaragere Rames of the People's Democratic Forum emphasized the need for an independent Inquiry by the UN into the War Crimes in Sri Lanka, he said "The human rights abuse during the war is disturbing. Not just the Tamils but everyone should raise their voice against the human rights violations in Sri Lanka"³². India's leading legal luminary Justice V.R.Krishna Iyer has been a signatory of the verdict given by the Permanent People's Tribunal on Sri Lanka which indicted Sri Lanka of War Crimes, Crimes against Humanity and Crimes against Peace at its 2010 session in Dublin, Ireland.

Other important civil rights activists who have supported an International Inquiry in to war crimes include, Justice Suresh of APCLC, Murali (HRF), Naraya Reddy (OPDR), Latif Khan (CLMC), Venugopal (VIRASM), Chandana Chakravarthy (The March), Jagmohan Singh, Editor World Sikh News, SAR Geelani, Committee for the Release of Political Prisoners, G.N.Saibaba, Vice Chairperson, International League of People's Struggles, S.Santosh, visiting faculty in School of Arts and Aesthetics, JNU, A.Bimol Akoiyam, Professor of Sociology, JNU and a host of others have been involved in a debate not only on the Tamil crisis, but also the role of India in protecting Sri Lanka³³.

Indian Political Parties

In March 2013, on the eve of the 22nd UNHRC where India was expected to vote, a fiery parliamentary debate took place in Delhi on whether India needs to support Sri Lanka or to vote in favor of the US sponsored resolution. Cutting across party lines there was total unanimity that India should vote in favor of the resolution. There were also calls by the leaders of the All India Anna Dravida Munnetra Kazhagam (AIADMK), Dravida Munnetra Kazhagam (DMK) and Congress(I) MPs from Tamil Nadu that India should sponsor a resolution seeking International Inquiry into the Crime of Genocide and press for referendum.

³⁰ <http://www.youtube.com/watch?v=27tDyvQpkP4>

³¹ Rajinder Sachar, **Plight Of Sri Lankan Tamils: India Shouldn't Keep Silent**, <http://www.countercurrents.org/karthick280511.htm>, 28 May, 2011

³² <http://www.theweekendleader.com/Causes/575/a-human-issue.html#sthash.reo01fNG.dpuf>

³³ <http://www.globalpeacesupport.com/2010/04/jnu-convention-condemns-sri-lanka-war-crimes/>

India's Finance Minister and the second most senior member of the Indian Cabinet of Ministers', Mr. Chidambaram was emphatic that India would continue to press for a "comprehensive and truthful investigation into the genocide and war crimes" against the hapless Tamils during the last stages of the civil war in Sri Lanka, a probe "which is also seen as credible by world powers" and will not rest until the guilty are brought to book.

On behalf of the Communist Party of India (CPI), Mr.D. Raja said, "Justice should be done to the Tamils of Sri Lanka and India cannot keep quiet. If we cannot rise to the occasion, we cannot claim to be a civilised nation with commendable ethics." India, he said, should demand an international investigation into the alleged human rights violations by Sri Lanka in the last phase of the civil war. ³⁴

Bahujan Samaj Party (BSP) MP Mr. Chauhan joined the debate in the Indian Parliament and said that it is the duty of the government to ensure that the rights of Lankan Tamils are protected.³⁵

Samajwadi Party Supremo, Mr. Mulayam Singh Yadav says, "We want that the matter should be resolved through discussions after all it is our neighbour. But if that is not happening India need to take strict action. Remember, Rajiv Gandhi was once attacked by a Lankan soldier." Mulayam Singh Yadav says India has consistently stood against the violation of human rights. Mulayam asks why India is silent and not asking questions on the war crimes.³⁶ Mulayam Singh Yadav (SP) asked the government to clarify its foreign policy on the Sri Lankan Tamil issue. 'Have you protested the atrocities being committed against the Tamils,' he asked. He said the Sri Lankan crisis was a result of the failure of the country's establishment of not following the principles of Jawaharlal Nehru that India would speak up against human rights violations in the world.³⁷

Mr.Yashwant Sinha, former External Affairs Minister of India and BJP leader, said an impartial inquiry should be held into the 'genocide' carried out against Sri Lankan Tamils and there should be a clear commitment from that government that guilty shall be punished.³⁸

JD(U) leader Sharad Yadav said India's relations with Sri Lanka should not be at the cost of the Sri Lankan Tamils. He urged the government to present its position forcefully during its next interaction with the Sri lankan government.³⁹

Jagadish Sharma of JD(U) said the fundamental needs of the Sri Lankan Tamils should be fulfilled and an international probe should be launched to punish those Sri Lankan Army personnel who brutally massacred the ethnic Tamils. CPI-M leader PR Natarajan also said persons responsible for war crimes against Sri Lankan Tamils should be brought to justice and India should involve Sri Lanka and try to find a peaceful solution to the problem.

³⁴ "India must vote against Sri Lanka", **The Hindu, NEW DELHI, February 21, 2013**

³⁵ <http://ibnlive.in.com/news/parliament-live-diplomacy-will-do-what-war-cannot-do-in-sri-lanka-says-salman-khurshid/377169-62-128.html>

³⁶ Diplomacy will do what war cannot do in Sri Lanka, says Salman Khurshid, <http://ibnlive.in.com/news/parliament-live-diplomacy-will-do-what-war-cannot-do-in-sri-lanka-says-salman-khurshid/377169-62-128.html>, Mar 07, 2013

³⁷ http://www.lankanewspapers.com/news/2013/3/81657_space.html

³⁸ <http://ibnlive.in.com/news/govt-cautious-on-sri-lanka-as-opposition-allies-demand-stern-action-bjp-dmk-stage-walkout/377214-37-64.html>

³⁹ Government failed Sri Lankan Tamils: Opposition, **The Economic Times**, Aug 26, 2011

CPI's P Lingam asked if Sri Lanka is a friendly country, why were they killing fishermen from Tamil Nadu in the sea. B Mehtab of BJD said that 'India should not be a mute spectator'. RJD chief Lalu Prasad urged the Centre to take note of human rights violation in Sri Lanka and make sure that such incidents do not happen in future. He also said it was not a simple Tamils issue, but an issue pertaining to India.⁴⁰

Saugata Roy, the Trinamool Congress MP, participating in the debate in the parliament on 7th March, 2013 said "What happened was that there was a case of genocide. This genocide of Tamils in Sri Lanka can be compared with genocide of Muslims in Bosnia-Herzegovina, the genocide in Rwanda in the sides between Hutus and Tutsis and even the genocide of Bengalis in Bangladesh by the Pakistani army. I agree that over one lakh Tamil people had died. Sir, one lakh Tamil people have died. Why did it happen?"⁴¹

Outside the Indian Parliament, the Lok Janshakthi Party president Ram Vilas Paswan favoured a referendum under the supervision of international community to determine the future of Sri Lankan Tamils. ⁴²Participating in a candle light vigil on the 18th of May 2013 at Marina in Chennai in remembrance of the lives lost during the final stages of the civil war at Mullivaikkal in May 2009, Mr. Paswan said all those involved in the massacre of Tamils in May 2009 should be punished.

SECTION 20

CALLS BY INTERNATIONAL CIVIL SOCIETY SINCE LAST RESOLUTIONS

Human Rights Watch: Sri Lanka made little progress in 2013 in accountability for serious human rights abuses committed during the country's civil war that ended in 2009. Human Rights Watch said today in its World Report 2014. As the United Nations and international condemnation escalated, human rights activists and journalists critical of the government continued to face intimidation and threats.

"The Sri Lankan government makes a lot of claims about pursuing accountability for wartime abuses, but the world is still waiting to see some results," said Brad Adams, Asia director at Human Rights Watch. **"It's clearer than ever that an independent international investigation is needed to make genuine progress in providing justice for victims."**

Amnesty International urges the HRC to ensure:

- an independent international investigation into allegations of crimes under international law committed by Sri Lankan government forces and allied armed groups as well as by the LTTE. Where sufficient admissible evidence exists, the international community must ensure that those suspected of the crimes are prosecuted in genuine proceedings in full conformity with international standards for fair trial;
- ongoing international monitoring of the human rights situation in Sri Lanka, including of the effectiveness of any domestic judicial or other processes; and
- strengthened UN measures to prevent intimidation or reprisals by or tolerated by the Sri Lankan government against individuals who seek to cooperate or have cooperated with the UN, its representatives and mechanisms in the field of human rights. 5 Feb. 2014.

⁴⁰ http://www.lankanewspapers.com/news/2013/3/81657_space.html

⁴¹ Trinamool MP Saugata Roy speaks about the genocide of Tamils in Sri Lanka at the Lok Sabha, https://aitmc.org/news_details.php?nid=1215

⁴² LJP backs Tamil Eelam cause, The Hindu, CHENNAI/TIRUCHI, May 21, 2012

- <http://www.amnesty.org/en/library/asset/ASA37/002/2014/en/424ad30f-1771-45d9-8ea5-5ce325dbd0dd/asa370022014en.pdf>

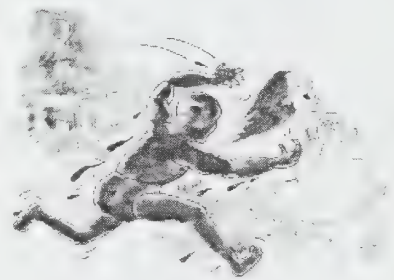
International Crisis Group: Lay the groundwork to establish at the March 2014 session, if the government is unable to demonstrate progress, a strong international mechanism empowered to investigate credible allegations of violations of international law by both sides in the civil war and to monitor continuing human rights violations and attacks on the rule of law

US Tamil Political Action Council: ‘International Probe a Must in Sri Lanka’

USTPAC urges the United States government to bring a strong resolution at the 25th session of the UN Human Rights Council setting up a **credible international investigative mechanism** to probe the mass atrocities unleashed on Tamil civilians by parties to the conflict. 11 Feb. 2014
<http://www.sacbee.com/2014/02/11/6147048/international-probe-a-must-in.html>

British Tamil Forum (BTF): Ahead of the United Nation Human Rights Council (UNHRC) session that is to take place in March, the Labour leader has been calling for an international independent investigation into war crimes and crimes against humanity since 2011. The Tamil Community asked Ed Miliband to reassert pressure on the British Government to deliver what Prime Minister David Cameron promised during his visit to Sri Lanka last year – an independent and international investigation.

Canadian Tamil Congress (CTC): Tamils worldwide remain hopeful that a meaningful resolution will be passed in the upcoming March 2014 United Nations Human Rights Council in Geneva – one with a mandate to establish an international independent investigation into allegations of war crimes, crimes against humanity and genocide committed during the final stages of the war.



National Council of Canadian Tamils - NCCT: Sri Lanka’s unwillingness to take concrete steps to address serious violations of human rights and international humanitarian law means that the only way to determine the facts and identify those responsible is through an independent, impartial and international investigation,”

The New York Times editorial board: ‘Holding Sri Lanka to Account’ Washington is once again trying to put pressure on the government of Sri Lanka to commission a credible independent investigation of crimes and human rights abuses committed during the end of that country’s bloody civil war in 2009... The new provincial council recently voted to call for an independent war crimes investigation. It is important that the world stand with those Sri Lankans who have demanded a full accounting of what happened during the war. 3 Feb 2014
www.nytimes.com/2014/02/04/opinion/holding-sri-lanka-to-account.html

Tamil Lawyers Forum [Sri Lanka]: The Tamil Lawyers Forum states that the current Commission is yet another mechanism to deceive and distract the international community from insisting on an international investigative mechanism that can ensure accountability and justice for the war crimes committed during the last stages of the war. 6 Feb 2014

International Criminal Evidence Project [Australia]: ‘Island of Impunity: Investigation into international crimes in the final stages of the Sri Lankan civil war’ This report presents an evidentiary platform for an international investigation into war crimes and crimes against humanity. Although violations were committed by both sides, the evidentiary material indicates that members of the Sri Lankan Security Forces (SFs) perpetrated the vast majority of alleged crimes during the investigation period. 5 Feb. 2014 http://www.piac.asn.au/sites/default/files/executive_summary_.pdf

Bruce Haigh, retired Australian diplomat: Genocide in Sri Lanka – an inconvenient finding The Australian government has adopted the fiction that the minority Tamils were the aggressors in the civil war, that the majority Sinhalese won the war, peace has been restored and the surly defeated Tamils must now accept the status quo and get on with life, accepting their position as a minority within mainstream Sinhala society.

That is not the finding of the Peoples' Tribunal on Sri Lanka which met in Bremen from 7-10 December 2013. I attended the hearings as an expert witness on Australian treatment of Sri Lankan Tamil asylum seekers. The full findings and decision of the Tribunal can be found at www.ptsrilanka.org.

It found, "On the strength of the evidence presented, the Tribunal reached the consensus ruling that the state of Sri Lanka is guilty of the crime of genocide against Eelam Tamils and that the consequences of the genocide continue to the present day with ongoing acts of genocide against Eelam Tamils." 11 Feb. 2014 <http://www.onlineopinion.com.au/view.asp?article=16011> Deleted Bruce Haigh's comments & the picture

Henrietta Briscoe [UK] – From R2P to RANP: The Responsibility to Protect (R2P) doctrine sets out a three-fold responsibility... But what happens when both the host state and the international community fail to fulfil their obligations under the doctrine of R2P? I argue that the international responsibilities under R2P survive after mass atrocities have been committed and after a failure of prevention and protection. I argue that inherent to R2P is ‘RANP’ – Responsibility After Not Protecting – and I employ the example of Sri Lanka to demonstrate the value of this concept. 7 Feb. 2014 <http://www.e-ir.info/2014/02/07/from-r2p-to-ranp-sri-lanka-and-responsibility-after-not-protecting/>

SECTION 21

AN APEAL FOR ACTION BY THE 25TH UNHRC IN MARCH 2014

We call on the UN Human Rights Council to strongly build atop last year's resolution A/HRC/22/L.1/Rev.1 which encouraged “the Government [of Sri Lanka] to conduct an independent and credible investigation into allegations of violations of international human rights law and international humanitarian law, as applicable.” The Government of Sri Lanka has clearly not conducted such an independent and credible investigation, so the responsibility to establish the facts and determine who is responsible must be taken up by international bodies.

Five years after the war, domestic processes have failed to provide accountability, so alternatives must be provided.

We call on the UNHRC to initiate that alternative by setting up an independent, international investigation of what took place at the end of the war and after in Sri Lanka to establish the basic facts of which crimes were committed and to determine who is responsible for those crimes against international human rights law and international humanitarian law.

On January 28, 2014, the UN Security Council voted unanimously calling the member states to impose travel bans and freeze the assets of people suspected of war crimes in the Central African Republic. These may be appropriate levers to encourage action in Sri Lanka also.

Along with the noteworthy and appropriate issues of concern raised in A/HRC/22/L.1/Rev.1, including militarization, illegal land appropriation and the need for a political settlement, those in the North and East of Sri Lanka are also concerned about the very much related issues of

- a) rapid demographic change, usually with the encouragement of the government and the military,
- b) religious aggression with the building of large Buddhist facilities where there have traditionally been few worshippers, the flying of religious flags by the military and efforts to change the historical narrative through bogus archeological evidence,
- c) sexual violence directed against the Tamil population, including against war widows, ex-LTTE cadres, and those in detention, and including efforts to limit the Tamil population through inappropriate birth control and abortions by the national health service.

We call on the UNHRC to take note of these ongoing abuses in this year's resolution. Similar to the suggestion by Michael Douglass Kirby, chairman of the UN Panel on North Korea, the Council should recommend that the Security Council refer the matter to the International Criminal Court to make all those responsible for crimes accountable. Alternatively, as Mr Kirby suggested, in the context of North Korea, ad hoc tribunals such as those convened to investigate crimes in Balkans and Rwanda should be established for Sri Lanka also. The Human Rights Council should also establish a structure to continue the collection of evidence of human rights violations. To paraphrase Judge Kirby, "Too many times in this building, there are reports and no action" **Now is the time for action in Sri Lanka.**

SECTION 22

FALLOUT IF THE HRC FAILS TO PASS A RESOLUTION CALLING FOR AN INTERNATIONAL INVESTIGATION

A catastrophe. No other word would be fit to describe the failure of the members of the UN Human Rights Council to pass a resolution that calls for an independent, international inquiry into the war crimes, crimes against humanity and genocide committed during the final stages of the war.

The reason for this is very straightforward. The genocidal intent and nature of the assault on Eelam Tamils in Sri Lanka is not just a matter between the 'Sinhalas' and the 'Tamils,' but one that concerns the entire planet. Like the Holocaust against the Jews carried out by the Nazis, the sordid events during the last stages of the civil war in Sri Lanka constitute an affront to all of humanity itself.

The world has seen much brutality in many parts of the globe since the end of the Second World War, but never before have such crimes been documented so thoroughly as in the case of Sri Lanka. The stark evidence of what the Sri Lankan forces did to the Tamils is there for everyone to see in the trophy videos made by the guilty soldiers themselves.

If the UN Human Rights Council -- for whatever reason -- fails to pass a resolution calling for an independent, international investigation of what took place at the end of the war and thereafter in Sri Lanka, there will be several probable consequences.

Effect on recovery from war

Recovery from war calls for an acknowledgement and a reckoning for what took place during and after the war. There must be a discovery of the facts by an independent body and an effort to 'see' these facts by all concerned. 'Facts' determined by the government cannot be imposed by force, because every Tamil lives what happened in their bodies, their hearts and their homes.

Seeking the facts and determining who is responsible is a vital step to move beyond the war and all its hatred and horrors.

Effect on other ethnic conflicts

In Syria, much about the conflict is different from the Sri Lankan war, yet for someone familiar with both, the parallels are striking.

The government who controls the country's military that receives foreign re-supply is in the hands of the minority Alawites, yet the tactics used against the civilian population are similar:

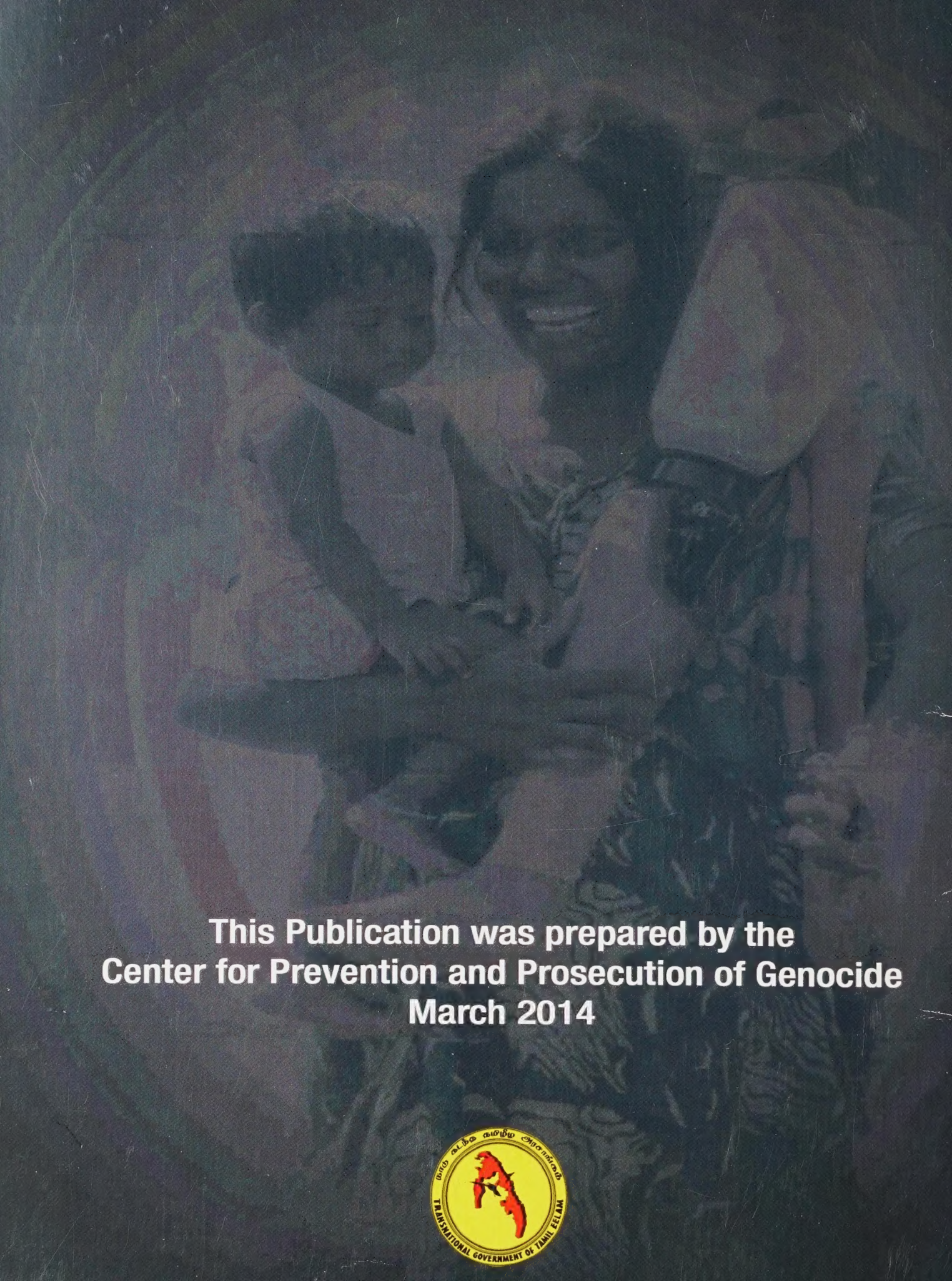
- **Heavy shelling of civilian habitation,**
- **Targeting infrastructure such as hospitals & water systems,**
- **Intentional efforts to create refugees,**
- **Use of food & medicine as weapons of war,**
- **Sieges of enemy territory,**
- **Widespread use of torture,**
- **Opponents are 'terrorists' because they oppose the government**

If this is the new face of internal conflicts, especially in countries plagued with ethnic and religious rivalries in which one side holds the tools of a state, then the countries of the United Nations must develop an appropriate response that will serve as a deterrent for mass attacks on civilians by 'their' own government.

Support for an impartial and thorough inquiry on the other hand can help end impunity and restore confidence in both due process domestically as well as in international law. This in turn would also send a strong message to other potential perpetrators of war crimes or genocide around the world that their actions will never go unpunished.

With strong allies, any country or force can target civilians at will, unless even tough cases are brought to book. The countries of the United Nations have acted in Syria's and the Central African Republic's cases, even if the outcome is not perfect. The UNHRC resolutions following the war have been the first concerted international effort on Sri Lanka ever.

In 2005, the World Summit of heads of state and government moved toward an international norm of the Responsibility to Protect. What took place in Sri Lanka in 2009 put that responsibility to shame and the Tamils of the North East are living with the consequences today in destroyed bodies, ruined infrastructure and a devastated society. Asia has seen the hollowness of the new norm.



**This Publication was prepared by the
Center for Prevention and Prosecution of Genocide
March 2014**

